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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 460

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY

No. 461

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONS FOR CERTIORARI FILED OCTOBER 15, 1942
CERTIORARI GRANTED NOVEMBER 16, 1942

SUPREME COURT OF THE UNITED STATES

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A [Caption omitted.]

1 In United States Circuit Court of Appeals for the Fifth
Circuit

No. 10076

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES, PETITIONER
vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petition to review an order of the National Labor Relations Board

Filed Oct. 1, 1941

*To the Honorable United States Circuit Court of Appeals for the
Fifth Circuit:*

Southern Association of Bell Telephone Employees brings this petition to review an order of the National Labor Relations Board, entered on the 23rd day of September 1941, in a proceedings before the Board having docket No. C-1911, and bearing the title, In the Matter of Southern Bell Telephone and Telegraph Company and International Brotherhood of Electrical Workers affiliated with the A. F. of L.

Petitioner feels itself aggrieved by the said order and brings this petition to review the same under § 10 (f) of the National Labor Relations Act.

2 Petitioner is a labor organization, and has in its membership over eighty-five percent of the employees of the Southern Bell Telephone and Telegraph Company who are eligible to join a labor organization.

The proceedings in which the order sought to be reviewed was entered was based upon charges filed by the International Brotherhood of Electrical Workers before the Regional Director of the Fifteenth District. On said charges and amended charges the National Labor Relations Board filed a complaint charging unfair labor practices and charging that the Southern Bell Telephone and Telegraph Company influenced and dominated and controlled petitioner.

Petitioner obtained leave to intervene in said proceeding and was made a party thereto, and filed its answer denying all the charges of domination of petitioner or interference with petitioner, and specifically asserting that petitioner was a labor organization such as is contemplated by § 7 of the National Labor Relations Act, and specifically asserting that the employees have freely chosen petitioner as their bargaining agent and that to disestablish peti-

tioner would be to deny to the employees the rights guaranteed them by the National Labor Relations Act.

Hearings were had before the Trial Examiner and evidence was introduced.

The Trial Examiner filed his intermediate report finding adversely to petitioner and petitioner excepted to the intermediate report. Thereafter the case was argued orally before the Board, and on September 23, 1941, the Board rendered an adverse decision and made an order which among other things required petitioner to be disestablished as the bargaining agent of the employees and required all contracts with petitioner to be nullified. The Board also overruled all of petitioner's exceptions to the intermediate report. The order and the opinion of the Board will be sent up with the record and are not further specified here.

3. Petitioner asserts the following errors:

1. The Board erred in ordering petitioner to be disestablished as the bargaining agent of the employees, and in ordering the contracts with petitioner to be nullified. Petitioner insists that the evidence demanded a contrary finding, and that there is no substantial evidence in the record to justify this order.

2. The Board erred in overruling each and every exception to the intermediate report which had been filed by petitioner.

3. The Board erred in denying to the employees of the Southern Bell Telephone and Telegraph Company the right to be represented through a bargaining agent of their own choosing, to wit, petitioner, which right is guaranteed by the National Labor Relations Act.

4. The Board erred in finding that petitioner was not such a labor organization as is contemplated by § 7 of the National Labor Relations Act. Petitioner shows that there was no substantial evidence to justify the Board's finding.

5. The Board erred in finding that petitioner was influenced, dominated, or supported in any way by the Southern Bell Telephone and Telegraph Company. Petitioner shows in this connection that there was no substantial evidence to justify such a finding, but that the uncontradicted evidence in the case required a contrary finding.

6. The Board erred in disregarding the fact that after petitioner had been disestablished, and after all employees had been notified of their rights, the overwhelming majority of the eligible employees had again selected petitioner as their bargaining agents, freely and without influence. Petitioner shows that the undisputed evidence in the case showed this to be the facts, and that it should have controlled the Board's decision.

Wherefore petitioner respectfully asks this Court to review the aforesaid order and to set the same aside, and prays that the Board be notified of the filing of this petition, and that a copy be served on the Board and it be required to file in this Court a transcript of the record and proceedings certified as such, including the testimony and the findings, and that this Court enter an order vacating and nullifying the action of the Board and granting petitioner such other relief as may be just and right,

SOUTHERN ASSOCIATION
OF BELL TELEPHONE
EMPLOYEES,

By (Signed) FRANK A. HOOPER, JR.,

(Signed) JAMES A. BRANCH,

Its Attorneys

[Duly sworn to by C. W. Dennis, Jr.; jurat omitted in printing.]

5 In United States Circuit Court of Appeals for the
Fifth Circuit

No. 10076

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES,
PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Order to file petition

Filed Oct. 1, 1941

A petition for review of the order of the National Labor Relations Board entered on September 23, 1941, in the Matter of: Southern Bell Telephone & Telephone Company and International Brotherhood of Electrical Workers, affiliated with A. F. of L., Case No. C-1911, N. L. R. B., having been presented to this Court;

It is ordered that said petition be filed and docketed as of Oct. 1, 1941.

And it is further ordered that a copy of this order and said petition be forthwith served upon the National Labor Relations Board, and that said Board, upon service of such copies, forthwith certify and file in this Court a transcript of the entire record in the proceeding, in conformity with Rule 38.

This 30 day of Sept. 1941.

(Signed) SAM'L H. SIBLEY,
United States Circuit Judge.

In United States Circuit Court of Appeals for the
Fifth Circuit

No. 10076

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES,
PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDED

Answer of the National Labor Relations Board

Filed Nov. 1, 1941

*To the Honorable, the Judges of the United States Circuit Court
of Appeals for the Fifth Circuit:*

Comes now the National Labor Relations Board, hereinafter referred to as the Board, and pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151; *et seq.*), hereinafter referred to as the Act, files this answer to the petition filed herein to review and set aside the Board's order.

1. The Board admits that petitioner is a labor organization but denies that it has any knowledge or information sufficient to form a belief as to the truth or falsity of petitioner's allegation that it "has in its membership over 85 per cent of the employees of the Southern Bell Telephone and Telegraph Company who are eligible to join a labor organization."

2. Answering the allegations of the petition relating to the proceedings before the Board, the Board prays reference to the certified transcript of the record of the proceedings before the Board, filed herein, for a full and exact statement of the pleadings, findings of fact, conclusions of law, and order of the Board, all of the evidence taken in this matter, and all other proceedings had in this matter before the Board; said proceedings being known on the records of the Board as Case No. C-1911, entitled In the Matter of Southern Bell Telephone and Telegraph Company and International Brotherhood of Electrical Workers, affiliated with A. F. L.

3. The Board denies each and every allegation of error contained in the petition.

Further answering, the Board avers that the proceedings had before it, the findings of fact, and conclusions of law and order of the Board, are in all respects valid and proper under the Act.

Wherefore, the Board respectfully prays this Honorable Court that the petition for review be denied. And the Board further

prays this Honorable Court that it cause notice of the filing of its answer to be served upon petitioner.

(Signed) LAURENCE A. KNAPP,
Laurence A. Knapp,
Associate General Counsel,
National Labor Relations Board.

Dated at Washington, D. C., this 28th day of October 1941.
[Duly sworn to by Laurence A. Knapp; jurat omitted in printing.]

In the United States Circuit Court of Appeals for the
Fifth Circuit

No. 10076

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES,
PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 10078

SOUTHERN BELL TELEPHONE AND TELEGRAPH CO., PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

*Motion and order consolidating cases for purposes of briefing
and argument*

Filed Nov. 6, 1941

Comes now the National Labor Relations Board and moves
the Court for an order consolidating the above-captioned
causes for the purposes of briefing and argument. In
support of said motion the Board respectfully shows as
follows:

On October 1, 1941, Southern Association of Bell Telephone
Employees filed a petition to review and set aside an order of the
Board in Case No. C-1911 before the Board, said cause being
No. 10076 in this Court. On October 2, Southern Bell Telephone
and Telegraph Co. filed in this Court a petition to review
and set aside the same order of the Board, said cause being No.
10078 in this Court. The Board respectfully represents that the
issues involved in these causes are the same and can be satisfac-

torily argued, briefed and determined in one proceeding before this Court.

Wherefore, it is respectfully prayed that an order be made and entered consolidating the above-captioned causes for the purposes of briefing and argument.

(Signed) LAURENCE A. KNAPP,
Laurence A. Knapp,
Associate General Counsel,
National Labor Relations Board.

Dated at Washington, D. C., this 28th day of October 1941.

Order

It is ordered by the Court that the above entitled and numbered causes be consolidated for the purposes of briefing and argument.

(Signed) RUFUS E. FOSTER
United States Circuit Judge.

Fort Worth, Texas, November 6, 1941.

10 In United States Circuit Court of Appeals, Fifth Circuit

No. 10078

SOUTHERN BELL TELEPHONE & TELEGRAPH CO., PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petition to review an order of the National Labor Relations Board

Filed Oct. 2, 1941.

To the Honorable United States Circuit Court of Appeals for the Fifth Circuit:

Southern Bell Telephone and Telegraph Company, a corporation under the laws of the State of New York, being aggrieved by a final order of the National Labor Relations Board (herein referred to as Board) in proceedings to be hereinafter more fully described, which appears upon the docket of the Board as case No. 6-1911, entitled in the Matter of Southern Bell Telephone and Telegraph Company and International Brotherhood of Electrical Workers affiliated with the A. F. of L., respectfully petitions this Honorable Court to review and set aside said order, and in support of its petition respectfully represents:

PARTIES AND JURISDICTION

Petitioner is and at all times hereinafter mentioned was a corporation duly existing under the laws of the State of New York. Petitioner's chief executive offices are located in Atlanta, in the State of Georgia, in the Fifth Judicial Circuit. Petitioner operates a telephone system throughout all States in the Fifth Judicial Circuit, except the State of Texas.

11 Respondent is a public body created pursuant to the Act of Congress of July 5, 1935, (49 Stat. 449) herein referred to as the National Labor Relations Act.

The Southern Association of Bell Telephone Employees, hereinafter called the Association, is a labor organization embracing in its membership approximately ninety per cent of petitioner's employees eligible to join a labor organization. Said Association intervened in the case before the Board, its intervention was allowed, and it was made a party to said case.

International Brotherhood of Electrical Workers is a labor organization affiliated with the American Federation of Labor. Said organization filed the charges before the Board against petitioner on which the complaint herein was issued.

The alleged unfair labor practices charged in the said proceedings before the Board were alleged to have occurred in the operation of petitioner's telephone system in the Fifth Judicial Circuit and within the jurisdiction of this Court.

By reason of the matters alleged above this Court has jurisdiction of this petition by virtue of Sec. 10 (f) of the National Labor Relations Act.

PROCEEDINGS BEFORE THE BOARD

Upon charges and amended charges filed by the International Brotherhood of Electrical Workers, the Board by its Regional Director for the Fifteenth Region (New Orleans, Louisiana) issued a complaint against petitioner dated February 17, 1941. Said complaint was afterwards amended. The Board in its opinion summarizes the complaint in the following language:

12 "Respecting the unfair labor practices, the complaint alleged in substance that the respondent: (1) on or about October 1, 1919, formed the Association and thereafter, to the date of the complaint, dominated and interfered with its administration and contributed financial and other support thereto by paying its expenses to July 5, 1935; on that date notified its employees that it could not thereafter defray the expenses of the Association and suggested that they continue it as their bargaining agent and make arrangements for its independent financing;

about May 20, 1935, paid the expenses of the Association in canvassing its members for the collection of funds, such funds continuing to be received after the effective date of the Act; from August 1, 1935, to February 1, 1936, paid the expenses of Association representatives meeting in Atlanta to revise the structure and joint agreement of the Association and advised them concerning such matters; from August 1, 1935, to July 1937, permitted the free use of its facilities and property by the Association for the conduct of business and solicitation of membership, and after June 25, 1937, charged only a nominal rental for such privileges; permitted its agents to discourage membership in the Union so as to encourage membership in the Association; and failed to notify its employees at any time of its discontinuing its support of the Association and of their rights under the Act; (2) entered into contracts with the Association; those executed in 1940 being in effect when the complaint was issued, and (3) interfered with, restrained, and coerced its employees by permitting its managers at Shreveport, Louisiana, and other places to make statements antagonistic to labor organizations other than the Association; during November and December, 1940, and January 1941, attempted to influence its employees in their choice of a labor organization by threats and inducements; and during November and December 1940, caused a rumor to circulate at its Shreveport, Louisiana, plant that employees who joined the Union would be demoted or discharged, and advised its employees that the Union would do them no good and might do them harm."

Thereafter by amendment the allegations of the complaint respecting statements antagonistic to labor organizations, were limited to Shreveport, Louisiana.

Petitioner filed its answer to the amended complaint.

The Association intervened in the case to resist the granting of an order to disestablish the said Association and its intervention is a part of the record before the Board. The Association also filed its answer wherein it asserted that it was free from domination by the petitioner. This answer was afterwards amended.

Hearings were held before a Trial Examiner of the Board, which hearings were held in Atlanta, Georgia, commencing on March 17, and running through March 21, 1931. Evidence was offered by the Board, by Petitioner and by the Association. On June 16, 1941, the Trial Examiner issued his intermediate report, finding adversely to the petitioner with regard to the charges made against petitioner and recommending that an order be made requiring petitioner to disestablish the Association as a

bargaining agent of petitioner's employees and recommending certain other action as shown from said report.

Thereafter petitioner and the Association each filed exceptions to the intermediate report; briefs were filed in support of the exceptions; and an oral argument was held on August 5, 1941, before the Board at Washington, D. C. Thereafter, dated the 23rd day of September 1941, and received by petitioner the following day, an opinion was rendered by the Board and an order made in which the Board overruled all of the exceptions filed by the petitioner; made certain findings of law and of fact, the errors in which will be hereinafter pointed out; and entered the following order:

"Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Southern Bell Telephone and Telegraph Company, Atlanta, Georgia, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) In any manner dominating or interfering with the administration of Southern Association of Bell Telephone Employees, or with the formation or administration of any other local organization of its employees and from contributing financial and other support thereto;

(b) Recognizing Southern Association of Bell Telephone Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment;

(c) Giving effect to or entering into, any contract or arrangement with Southern Association of Bell Telephone Employees relating to rates of pay, wages, hours of employment, or other conditions of employment;

(d) In any other manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Southern Association of Bell Telephone Employees as a representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of

employment, or other conditions of employment, and completely disestablish said Southern Association of Bell Telephone Employees as such representative;

(b) Immediately post notices to its employees in conspicuous places throughout all its offices, plants, and places of business and maintain such notices for a period of not less than sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), (c), and (d) hereof; and (2) that it will take the affirmative action set forth in paragraph 2, (a) hereof.

(c) Notify the Regional Director for the Fifteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith."

ASSIGNMENTS OF ERROR

1. The Board erred in holding and finding that petitioner had been guilty of unfair labor practices as defined by the National Labor Relations Act in any respect whatsoever. Petitioner points out in this connection that there was no substantial evidence of any kind in the record justifying such a finding and the finding is contrary to the undisputed evidence in the record, including stipulations made by the Board's attorney.

16 2. The Board erred in failing to find affirmatively that petitioner, since the passage of the National Labor Relations Act, had consistently, actively, affirmatively, and in good faith endeavored to comply with the requirements of the act in all respects. Petitioner points out in this connection that the evidence to the above effect was undisputed in this record.

3. The Board erred in not finding affirmatively that whatever technical errors of construction of the requirements of the act may have been made immediately after its passage, nevertheless from the early part of 1937 petitioner had not only endeavored to comply with all the provisions of the act but had fully and completely complied with said provisions and had made no mistakes of even a technical or minor character. Petitioner points out in this respect that the evidence in this respect was overwhelming and uncontradicted, but this evidence apparently was ignored by the Board.

4. The Board erred in not finding affirmatively that whatever may have been the relationship of petitioner to the Association of employees existing before the National Labor Relations Act, nevertheless, from and after the passage of the National Labor Relations Act, and especially at the present time and for many years prior to the present time, petitioner has not in any way

interfered with, dominated, supported or in any other way tended to influence the present Association in any respect. Petitioner points out in this connection that the evidence to this effect was overwhelming and uncontradicted.

5. The Board erred in holding that petitioner at the present time influences or dominates or supports in any way the said Association. Petitioner points out that there was no substantial evidence in the record to support such a finding, and that the overwhelming and uncontradicted evidence was directly to the contrary.

6. The Board erred in ordering petitioner to cease from dominating or interfering with the administration of the Association or with the formation or administration of any other labor organization, and from contributing financial and other support thereto. Petitioner points out that the error in said holding is because there is no substantial evidence in the record to justify such an order and the overwhelming and uncontradicted evidence requires a contrary finding.

7. The Board erred in ordering petitioner to cease from recognizing the Association as the representative of the employees, and from dealing with the same, and from giving effect to or entering into contracts with the same. The error in said order is that there is no substantial evidence in the record justifying such an order and the overwhelming and uncontradicted evidence required a contrary action.

8. The Board erred in ordering petitioner to desist from interfering with, restraining or coercing its employees in the exercise of their rights of self-organization. The error in said order is because there is no substantial evidence in the record to sustain the same and the overwhelming and uncontradicted evidence requires contrary action.

9. The Board erred in ordering the affirmative action required of petitioner by said order, because there was no substantial evidence in the record authorizing such affirmative action, and because the overwhelming and uncontradicted evidence required contrary action by the Board.

10. The Board erred in finding that if petitioner had prior to the passage of the National Labor Relations Act contributed to the support of the Association that this fact alone justified the Board in finding and holding that the present Association could never under any circumstances thereafter be or become a

18 legal labor organization, and that under no circumstances thereafter could the employees select the said Association as their Association, notwithstanding the uncontradicted proof

in the record that for many years the Association had been wholly free from any such influence or interference.

11. The Board erred in holding that petitioner was not bound to bargain collectively with the Association and in ordering petitioner to disestablish the Association. In connection with this assignment petitioner points out that there was no substantial evidence to sustain a finding that the Association was not a labor organization, freely and voluntarily formed and chosen by petitioner's employees, without interference, intimidation, coercion, or domination on the part of petitioner. Petitioner also points out that the undisputed evidence demanded a finding that the said Association had been joined by the said employees freely and without influence or coercion by petitioner and had been similarly selected by them. Being such an Association petitioner was bound under subsection (5) of Section 8, of the National Labor Relations Act to recognize the said Association for collective bargaining.

12. The evidence demanded a finding by the Board that the Association was such an organization of employees as is provided for and contemplated by § 7 of the National Labor Relations Act, and the Board erred in that in effect it found the contrary.

13. The Board erred in overruling each and every exception filed by petitioner to the Trial Examiner's intermediate report. Petitioner assigns error separately upon the overruling of each of said exceptions. The Board not only overruled the exceptions but in its opinion made the same findings, using much the same language used by the Trial Examiner, and repeated each and every error

of the Trial Examiner's report which had been pointed out by petitioner's exceptions. These exceptions to the Trial

Examiner's report are in the record and will be printed for the use of this Court in the same pamphlet in which this petition will be printed for the use of the Court. In the interest of brevity and to avoid wholly unnecessary repetition, and to avoid extending this petition to unreasonable length, petitioner does not repeat here separately the substance of each of these exceptions but asks that the said exceptions be treated as an exhibit to this petition so far as may be appropriate.

14. The Board erred in holding that petitioner was in any way responsible for or bound by the activities of Askew and Mrs. Wilkes in connection with Association matters. Said holding is without substantial evidence to support it and contrary to the uncontradicted proof in the case.

PRAYER

Wherefore, Southern Bell Telephone and Telegraph Company petitions this Honorable Court for a review of the aforesaid

order of the National Labor Relations Board, dated the 23rd day of September 1941, and prays:

(1) That the Board be notified of the filing of this petition for a review of its order and that a copy of this petition and the process of this Court be forthwith served upon the Board.

(2) That the Board be required in conformity with law to file in this Court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board.

(3) That the proceedings before the Board as set forth in said transcript be reviewed by this Court and that the said order be set aside, vacated and annulled, and that the Board be ordered to dismiss its complaint against this petitioner.

(4) That the Court granted petitioner such other and further relief in the premises as may be appropriate and in accordance with law.

SOUTHERN BELL TELEPHONE
AND TELEGRAPH CO.,

By (Signed) MARION SMITH,

(Signed) E. W. SMITH,

(Signed) JNO. A. BOYKIN, Jr.,

Its Attorneys.

[Duly sworn to by Hal S. Dumas; jurat omitted in printing.]

21 In United States Circuit Court of Appeals for the
Fifth Circuit

No. 10078

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY,
PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

*Order to file petition and that one record may serve for cases
No. 10076 and No. 10078*

Filed Oct. 2, 1941

A petition for review of the order of the National Labor Relations Board entered on September 23, 1941, In the Matter of Southern Bell Telephone and Telegraph Company and International Brotherhood of Electrical Workers affiliated with A. F. of L., Case No. C-1911, having been presented to this Court;

It is ordered that said petition be filed and docketed as of Oct. 2, 1941.

And it is further ordered that a copy of this order and said petition be forthwith served upon the National Labor Relations Board, and that said Board, upon service of such copies, forthwith certify and file in this Court a transcript of the entire record in the proceeding, in conformity to Rule 38, provided one record may serve for this and the petition sanctioned yesterday in the same controversy.

(Signed) SAM'L H. SIBLEY,
United States Circuit Judge.

ATLANTA, GA., Oct. 1, 1941.

22 In United States Circuit Court of Appeals for the
Fifth Circuit

No. 10078

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY,
PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Answer of the National Labor Relations Board and request for enforcement

Filed Nov. 1, 1941

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

Comes now the National Labor Relations Board, hereinafter referred to as the Board, and pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, et seq., hereinafter referred to as the Act, files this answer and request for enforcement of the Board's order.

1. The Board admits the allegations set forth in the petition for review under the caption, "Parties and Jurisdiction," but denies that it has any knowledge or information sufficient to form a belief as to the truth or falsity of petitioner's allegation that the Southern Association of Bell Telephone Employees embraces "in its membership approximately 90 per cent of petitioner's employees eligible to join a labor organization."

2. Answering the allegations contained in the petition under the caption, "Proceedings Before the Board," the Board prays reference to the certified transcript of the record of the proceed-

ings before the Board, filed herein, for a full and exact statement of the pleadings, findings of fact, conclusions of law, and order of the Board, all of the evidence taken in this matter; and all other proceedings had in this matter before the Board.

23 3. The Board denies each and every allegation contained in the petition under the caption, "Assignments of Error."

Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law and order of the Board, are in all respects valid and proper under the Act.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for the enforcement of its order against petitioner, dated September 23, 1941, in Case No. C-1911, entitled In the Matter of Southern Bell Telephone and Telegraph Company and International Brotherhood of Electrical Workers, affiliated with A. F. L.

In support of this request for enforcement of its order, the Board respectfully shows as follows:

(a) Petitioner is a New York corporation having its office and principal place of business in Atlanta, Georgia. It operates a telephone system throughout all the States within the Fifth Judicial Circuit except Texas. This Court has jurisdiction of the petition to review herein and this request for enforcement, by virtue of Section 10 (e) and (f) of the Act.

(b) Upon the proceedings had in Case No. C-1911 before the Board including, without limitation, the complaint, answer, hearing for the purpose of taking testimony, Trial Examiner's Intermediate Report and objections filed thereto, and oral argument thereon before the Board, as more fully shown by the entire record in Case No. C-1911 certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on September 23, 1941, duly stated its findings of fact and
24 conclusions of law and issued the following order directed to petitioner, its officers, agents, successors, and assigns:

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Southern Bell Telephone and Telegraph Company, Atlanta, Georgia, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) In any manner dominating or interfering with the administration of Southern Association of Bell Telephone Employees,

or with the formation or administration of any other local organization of its employees and from contributing financial and other support thereto;

(b) Recognizing Southern Association of Bell Telephone Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment;

(c) Giving effect to or entering into, any contract or arrangement with Southern Association of Bell Telephone Employees relating to rates of pay, wages, hours of employment, or other conditions of employment;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

25 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Southern Association of Bell Telephone Employees as a representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said Southern Association of Bell Telephone Employees as such representative;

(b) Immediately post notices to its employees in conspicuous places throughout all its offices, plants, and places of business and maintain such notices for a period of not less than sixty (60) consecutive days from the date of posting, stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), (c), and (d) hereof; and (2) that it will take the affirmative action set forth in paragraph 2 (a) hereof.

(c) Notify the Regional Director for the Fifteenth Region in writing ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(c) The Board's decision and order were duly served on petitioner on September 23, 1941.

(d) Pursuant to Section 10 (e) and (f) of the Act, the Board is certifying and filing with this Court the transcript of the entire record in Case No. C-1911 before the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and of the filing of the entire record in said proceedings before the Board, to be served upon petitioner; that the Court take jurisdiction of the proceedings and of the questions determined therein; and that it make and enter upon the pleadings, the testimony and evidence, and proceedings set forth in the entire record of said proceedings and the order made therein, a decree denying the petition to set aside the order of the Board, and enforcing in whole said order set forth above, and requiring petitioner and its officers, agents, successors, and assigns, to comply therewith.

(Signed) LAURENCE A. KNAPP,
 Laurence A. Knapp,
 Associate General Counsel,
 National Labor Relations Board.

Dated at Washington, D. C., this 28th day of October 1941.
[Duly sworn to by Laurence A. Knapp; jurat omitted in printing.]

27 Before the National Labor Relations Board, Fifteenth
 Region

Case No. XV-C-617

In the Matter of SOUTHERN BELL TELEPHONE AND TELEGRAPH CO.
 (INCORPORATED) and INTERNATIONAL BROTHERHOOD OF ELECTRIC-
 TICAL WORKERS, AFFILIATED WITH AMERICAN FEDERATION OF
 LABOR

Amended charge

Received 2:00, Jan. 15, 1941, National Labor Relations Board,
 15th Region

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Southern Bell Telephone and Telegraph Co. (Incorporated), Atlanta, Georgia, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) of said Act, in that

On or about August 26, 1935, and at all times thereafter, it, by its officers, agents and employees, sponsored and caused to be formed among its employees throughout the Southern Bell Telephone System in the States of North Carolina, South Carolina, Florida, Georgia, Alabama, Mississippi, Louisiana, Tennessee, and Kentucky a labor organization within the meaning of Section 2, Subsection 5 of said Act, known as Southern Association

of Bell Telephone Employees; and at all times since that date
has dominated and interfered with the operation and ad-
28 ministration of said Association and has contributed fi-
nancial and other support thereto.

Said Southern Association of Bell Telephone Employees is in all respects either the same organization as the Southern Association of Bell Telephone Employees, sponsored and formed by the respondent in 1919, or is a direct lineal successor thereto. It is alleged that the Southern Association of Bell Telephone Employees, formed in the year 1919, was and is a company-dominated labor organization within the meaning of Section 8 (2) of the Act.

At the present time contracts are in effect between the respondent and said Association covering all units of respondent's operations. Because of the respondent's domination of said Association, all such contracts now in effect are invalid.

By the acts set forth in the paragraphs above and, specifically, by the following acts and conduct at its exchange in Shreveport, Louisiana, respondent has, by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act: (a) by discouraging membership in the undersigned labor organization, specifically between the dates of November 15, 1940, and the date of the filing of this Charge, through its District Traffic Manager and through its local Chief Operator and other supervisory employees; (b) by encouraging membership in the Association through the agency of the same supervisory employees, and (c) by threatening employees with discharge or other penalties in the event they persisted in their membership in the undersigned.

29 The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, AFFILIATED WITH AMERICAN
FEDERATION OF LABOR

By O. A. WALKER,
O. A. Walker,

*International Representative,
259 Merrick Street, Shreveport, La.*

Subscribed and sworn to before me this 15th day of January 1941, at New Orleans, La.

CHARLES H. LOGAN,
Charles H. Logan,

Regional Director, N. L. R. B., Fifteenth Region.

National Labor Relations Board. Case No. XVC-617. Board Exhibit No. 1-B. In the Matter of So. Bell T. & T. Co. Date 3-17-41. Witness ----- Daniel W. Ross, Official Reporter, by A. B. Hale, Associate.

30 Before the National Labor Relations Board, Fifteenth Region

In the Matter of

Southern Bell Telephone & Telegraph Co. (Incorporated)

and Case No. XV-C-617

International Brotherhood of Electrical Workers, Affiliated with A. F. L.

COMPLAINT.

It having been charged by the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, hereinafter called the Union, a labor organization, that Southern Bell Telephone & Telegraph Company, a corporation, hereinafter called the Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act, the National Labor Relations Board, hereinafter called the Board, by the Regional Director for the Fifteenth Region, an agent of the Board, designated by the Board's Rules and Regulations, Series 2, as amended, hereby alleges the following:

1. Respondent is, and has been for more than 10 years, a corporation organized under and existing by virtue of the laws of the State of New York, having its principal executive office in the City of Atlanta, State of Georgia. Respondent is now, and has continuously over a period of years been engaged in the general telephone business in the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. It owns and operates numerous plants and exchanges in cities located in the above-named States.

31 2. In the course and conduct of its business, Respondent purchases and causes to be transported across State lines

from the State of purchase into the State of use, large quantities of equipment, machinery and supplies, constituting a substantial percentage of the total purchases of such equipment, machinery and supplies, for use in its business operations. Respondent, in the course and conduct of its business, maintains and operates a telephone system across State boundaries and connecting with services performed by other Telephone Companies affiliated with the American Bell Telephone and Telegraph System.

3. The International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, and the Southern Association of Bell Telephone Employees, unaffiliated, hereinafter called the Association, are labor organizations within the meaning of Section 2, subsection (5) of the Act.

4. Respondent, by its officers, agents and employees, did, on or about October 1, 1919, and on dates thereafter down to and including the date of the issuance of this Complaint, foster, encourage, sponsor, dominate and interfere with the formation, enlisting of membership in and administration of a labor organization of its employees known as the Southern Association of Bell Telephone Employees, and did contribute financial and other support thereto, and did thereby engage in and is now engaging in unfair labor practices within the meaning of Section 8, subdivision (2) and (1) of the Act; specifically by the following actions:

(a) On or about October 1, 1919, Respondent caused the Association to be formed at Respondent's expense and thereafter down to and including July 5, 1935, defrayed all expenses incidental to the operations of the Association;

32 (b) On or about July 5, 1935, Respondent through its officers, agents and employees, notified all of its employees that because of the passage of the National Labor Relations Act it could not thereafter continue to defray all expenses of the Association and suggested to its employees that they continue the Association as their bargaining agent, but that they make arrangements independently to finance the Association;

(c) On or about May 20, 1935, in anticipation of the passage of the Act, respondent through its then Assistant President, Mr. Dumas, and through other agents by agreement with officers of the Association undertook to and did pay all the expenses of a group of Association representatives incurred while such representatives were making a canvass of Respondent's employees throughout the Southern system collecting funds to finance the purported reorganization of the Association. Funds so collected continue to be received by the Association subsequent to the passage of the Act;

(d) Between on or about August 1, 1935, and February 1, 1936, representatives of the Association assembled in Atlanta, Georgia,

on numerous occasions for the purpose of holding joint discussions with the management regarding revisions of the basic structure of the Association and its joint agreement with the Respondent. Expenses of Association representatives during such meetings were defrayed by the Respondent, and in the course of such meetings Respondent's officers and agents instructed and advised Association representatives how to effect the purported reorganization of the Association.

(e) From on or about August 1, 1935, down to and including July 1937, Respondent permitted the free use without rental of company property and facilities and company time throughout its Southern system by the Association for the purpose of transacting the Association's business, soliciting employees to become members, holding meetings and transacting other business. On or about June 25, 1937, Respondent instituted the practice of charging the Association a nominal rental for the use of company premises for meeting purposes, but such rentals as were paid were nominal only and Respondent's continuation of the practice of permitting Association meetings to be held on its property constitutes substantial aid and support to the Association.

(f) Respondent has further supported the Association by permitting its officers, agents and supervisory employees to discourage membership in any nationally affiliated labor organization, particularly the Union herein, for the purpose of encouraging membership in the Association.

(g) Respondent, by its officers, agents and employees, further supported and sponsored the Association by neglecting at any time to advise its employees of the discontinuance of its support of the Association and of their right to form, join or assist a labor organization of their own choosing without interference or coercion by respondent.

5. Respondent, by its officers, agents and supervisory employees, in furtherance of its plan and course of action to support and control the Association, as described above in paragraph 4, and as a culmination thereof, has entered into and executed various contracts and agreements with the Association and subdivisions of the Association, which contracts and agreements as revised and agreed to during the year 1940 are now in effect. By reason of the acts set forth above in paragraph 4 and by reason of other acts of interference by the Respondent from the time of its organization down to the time of the execution of the last agreements with the Association, the aforesaid agreements were entered into with a labor organization established, maintained and assisted by the Respondent in violation of Sec-

tion 8 (2) of the Act, and the Association was not and is not the representative of Respondent's employees within the meaning of Section 9 (a) of the Act, and all such contracts and agreements now in effect are, therefore, void and should be set aside.

6. By its activities described in paragraphs 4 and 5, inclusive above, and by each of them and by other acts, Respondent did dominate and interfere with the formation and administration of a labor organization, and has contributed and is contributing financial and other support thereto, and did thereby engage in, and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (2) of the Act.

7. Respondent, by its agents, while engaged in business as described above, has interfered with, restrained and coerced its employees, and is interfering with, restraining and coercing its employees in their choice of a labor organization by the following actions:

(a) By permitting its district and divisional managers to inform employees at its Shreveport, Louisiana; Jackson, Mississippi; Birmingham, Alabama; Nashville, Tennessee; Spartanburg, South Carolina; Ashville, North Carolina; and other plants throughout the Southern Bell System during the years from July 5, 1935, down to and including the date of the issuance of this Complaint, to make statements to its employees indicating an antagonistic and hostile attitude on the part of the company toward affiliation by its employees with any labor organization other than the Association.

(b) By attempting to influence its employees in their choice of a labor organization by the use of threats and offers of inducements, particularly during the months of 35 November and December 1940, and January 1941, at its Shreveport, Louisiana, plant.

(c) By causing to be circulated among its employees at Shreveport, during the months of November and December 1940, a rumor to the effect that all persons joining the Union would be discharged or demoted.

(d) By advising employees that the Union could do them no good and might do them harm, during the months of November and December 1940, particularly at its Shreveport, Louisiana, plant.

8. By the acts alleged above in paragraph 7, and by each of them, Respondent through its agents has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

9. The aforesaid acts of the Respondent, as set forth in paragraphs 4, 5, 6, 7, and 8, inclusive above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (2), and Section 2, subsections 6 and 7 of the Act.

10. The aforesaid acts of the Respondent, set forth in paragraphs 4 through 8, inclusive above, occurring in connection with the operations of Respondent described in paragraphs 1 and 2, inclusive above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

36 Wherefore, the National Labor Relations Board on the 17th day of February 1941, issues its Complaint against the Southern Bell Telephone & Telegraph Company, Respondent herein.

NOTICE OF HEARING

Please take notice that on the 17th day of March 1941, at ten o'clock in the forenoon, in Room 324, Old Post Office Building, Atlanta, Georgia, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with the Rules and Regulations, Series 2, as amended, Article II, Section 23, on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director of the Fifteenth Region, 630 Federal Office Building, New Orleans, Louisiana, acting in this matter as the agent of the National Labor Relations Board, an answer to the above Complaint within ten (10) days of service of said Complaint.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 2, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of the said Rules and Regulations.

In witness whereof, the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Fifteenth Region on the 17th day of February 1941.

C. H. LOGAN,

Charles H. Logan,

*Regional Director, Fifteenth Region,
National Labor Relations Board.*

37 National Labor Relations Board. Case No. XVC-617.
Board Exhibit No. 1-C. In the Matter of So. Bell T. & T.
Co. Date 3/17/41. Witness Daniel W. Ross, Official
Reporter, By A. B. Hale, Associate.

Before the National Labor Relations Board, Fifteenth
Region

Case No. XV-C-617

In the Matter of

SOUTHERN BELL TELEPHONE & TELEGRAPH CO. (INCORPORATED) and
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFFILI-
ATED WITH A. F. L.

35 *Response of Southern Bell Telephone and Telegraph
Company*

Received 12:00, Feb. 28, 1941, National Labor Relations Board,
15th Region

Respondent, Southern Bell Telephone and Telegraph Company,
for answer to the complaint filed herein against it, says:

I

The allegations of numbered paragraphs 1, 2, and 3 are admitted.

II

Except as hereinafter specifically admitted, the allegations of
numbered paragraph 4 (including paragraphs a, b, c, d, e, f, and
g) are each and severally *seriatim* denied.

Further answering numbered paragraph 4 respondent
says:

38 Prior to July 5, 1935, and on or about October 1, 1919,
representatives of the employees of respondent, under the
sponsorship of respondent, undertook to and did form a labor
organization, composed of employees of respondent, known as
Southern Association of Bell Telephone Employees, and there-
after up to July 5, 1935, at the special instance, request and demand
of said Association, respondent contributed financial support and
other concessions thereto.

Respondent avers, however, that since July 5, 1935, all support
by respondent of said association, both financial and otherwise,
has been withdrawn, and that respondent has engaged in no
practice which under the National Labor Relations Act is an un-
fair labor practice, and avers that to the present time respondent

has neither dominated nor attempted to dominate, within the meaning of said Act or otherwise, said association, nor in fact has said association been so dominated.

By way of further response specifically to paragraph numbered 4 (b), respondent admits that on or about July 5, 1935, it notified all of its employees of the passage of the National Labor Relations Act, but avers that on about said date and at various other times subsequent thereto, not only were they notified and advised of the withdrawal by respondent of financial support of the association, but were further advised of their rights under said Act and of respondent's recognition of their rights fully and freely to enjoy the privileges granted employees under the Act; but specifically denies that respondent suggested to its employees that they continue the association as their bargaining agent.

By way of further response specifically to paragraph numbered 4 (c), respondent avers that the fund raised by the association on or about May 20, 1935, through voluntary subscriptions of the employees was wholly initiated by and effectuated through the efforts of the association without suggestion, assistance, or participation by respondent or any of its officers or agents; and that the payment by respondent of such expenses incurred by the association was in conformity with the obligation, agreement and practice of respondent with the association to defray all necessary expenses incurred by the association, which obligation and practice had been in effect for more than fifteen years prior thereto.

Respondent is without knowledge of the time when said funds were received by the association.

III

The allegations of paragraph numbered 5 are each and severally seriatim denied; except, respondent admits the existence of various contracts and agreements between the association, representing respondent's employees as their collective bargaining agent, and respondent, which said contracts as revised or amended are in full force and effect.

IV

The allegations of numbered paragraphs 6, 7, 8, 9, and 10 are each and severally seriatim denied.

V

Now having fully answered the complaint herein against it, respondent for further answer thereto specifically says:

A. Respondent denies that since the passage of the National Labor Relations Act it has done any act or engaged in any activity or in any practice intended, designed, or having the effect of interfering with, restraining, or coercing its employees in the exercise of any right given, protected, or guaranteed by the National Labor Relations Act, and avers that respondent, in theory or in fact or otherwise, is not dominating nor has it dominated said association, and avers that said association is not and has not been so dominated.

B. Respondent, after having been advised that the International Brotherhood of Electrical Workers was seeking memberships among respondent's employees, and after respondent had been advised that the Southern Association of Bell Telephone Employees was to canvass its membership by signed ballot, on the 14th day of February 1941, posted a notice, Exhibit A hereto, on all bulletin boards, and, where no bulletin boards, in a prominent place in all buildings owned or leased by respondent; and therefore avers that by so doing respondent again intended to and did proclaim its strict neutrality.

Wherefore, respondent prays an order dismissing this complaint on its merits, and for such other proper relief, both general and special, to which it may be entitled under the law or in equity and good conscience.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY,

By H. S. DUMAS, *Vice-President*.

67 Edgewood Avenue, S. E., Atlanta, Georgia.

[*Duly sworn to by H. S. Dumas; jurat omitted in printing.*]

41

Exhibit A to response

Southern Bell Telephone and Telegraph Company

NOTICE

To All Employees:

Southern Bell Telephone and Telegraph Company Directs Your Attention to the Following Sections of the National Labor Relations Act (Wagner Bill):

"Rights of Employees

"SEC. 7. Employees shall have right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

42. "Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this act as unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a)."

43. The Company Recognizes Its Employees' Right to Join, Form or Affiliate With Any Labor Organization of Their Own Choice and Freely to Exercise All Rights Secured to Them by This Act.

The Company Guarantees Its Strict Compliance With All the Provisions of This Act and That No Employee Will Be Discriminated Against or Suffer Any Other Penalty Because of His or Her Exercise of Any Right Secured by This Act.

The Company Is Not Interested in Whether Its Employees Join or Do Not Join Any Labor Organization.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY,
J. E. WARREN, *President*.

Posted this February ----, 1941, at ---- o'clock, ---- M.

By -----

(Title)

POWER OF ATTORNEY

United States of America

Before the National Labor Relations Board, Fifteenth Region

Case No. XV-C-617

In the Matter of SOUTHERN BELL TELEPHONE & TELEGRAPH CO.
(INCORPORATED) and INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, AFFILIATED WITH A. F. L.

44 GEORGIA.

Fulton County.

Know All Men By These Presents: That Southern Bell Telephone and Telegraph Company hereby constitutes and appoints Marion Smith, of the firm of Hirsch, Smith & Kilpatrick, of Atlanta, Georgia, and E. D. Smith, its Vice-President and General Counsel, E. W. Smith, its General Solicitor, John A. Boykin, Jr., its Attorney, and E. D. Smith, Jr., collectively and severally, its attorneys to represent this Company in any and all matters directly or indirectly relating to the above entitled matter, with full power, collectively or severally, to appear for or enter the appearance of this Company and in all respects fully conduct any and all matters pertaining to or arising out of or in this proceeding, for or in its behalf or in its name.

Witness the signature of Southern Bell Telephone and Telegraph Company, a corporation, on this 26th day of February A. D. 1941, by and through its Operating Vice-President, duly attested by its Secretary:

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY.

By H. S. DUMAS, *Vice-President.*

[SEAL]

Attest:

J. P. WARREN, *Assistant Secretary.*

GEORGIA.

Fulton County.

In person appeared H. S. Dumas, Vice-President of Southern Bell Telephone and Telegraph Company, a corporation, and J. P. Warren, Asst. Secy. of said corporation, who as such Vice-President and Secretary, respectively, acknowledged that for

45 and in the name of and in behalf of said corporation they signed, executed, and delivered the above and foregoing instrument on the day and date therein named, and J. P. Warren as such Asst. Secy. affixed the corporate seal thereto, each being thereunto duly authorized so to do.

Given under my hand and official seal on this the 26th day of February A. D. 1941.

[SEAL]

J. H. GRAHAM,
Notary Public,
Fulton County, Georgia.

My Commission Expires August 24, 1941.

Before the National Labor Relations Board, Fifteenth Region

Case No. XV-C-617

In the Matter of SOUTHERN BELL TELEPHONE & TELEGRAPH CO.
(INCORPORATED), and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFFILIATED WITH A. F. L.

Amended complaint

It having been charged by the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, hereinafter called the Union, a labor organization, that Southern Bell Telephone & Telegraph Company, a corporation, hereinafter called the Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act, the National Labor Relations Board, hereinafter called the Board, by the Regional Director for the Fifteenth Region, an agent of the Board, designated by the Board's Rules and Regulations, Series 2, as amended, hereby alleges the following:

1. Respondent is, and has been for more than 10 years, a corporation organized under and existing by virtue of the laws of the State of New York, having its principal executive office in the City of Atlanta, State of Georgia. Respondent is now, and has continuously over a period of years been engaged in the general telephone business in the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. It owns and operates numerous plants and exchanges in cities located in the above-named States.

2. In the course and conduct of its business, Respondent purchases and causes to be transported across State lines from the State of purchase into the State of use, large quantities of equipment, machinery and supplies, constituting a substantial percentage of the total purchases of such equipment, machinery and supplies, for use in its business operations. Respondent, in the course and conduct of its business, maintains and operates a telephone system across State boundaries and connecting with services per-

formed by other Telephone Companies affiliated with the American Bell Telephone and Telegraph System.

3. The International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, and the Southern Association of Bell Telephone Employees, unaffiliated, hereinafter called the Association, are labor organizations within the meaning of Section 2, subsection (5) of the Act.

4. Respondent, by its officers, agents and employees, did, on or about October 1, 1919, and on dates thereafter down to and including the date of the issuance of this Amended Complaint, foster, encourage, sponsor, dominate, and interfere with the formation, enlisting of membership in, and administration of, a labor organization of its employees known as the Southern Association of Bell Telephone Employees, and did contribute financial and other support thereto, and did thereby engage in and is now engaging in unfair labor practices within the meaning of Section 8, subdivisions (2) and (1) of the Act; specifically by the following actions:

(a) On or about October 1, 1919, Respondent caused the Association to be formed at Respondent's expense and thereafter down to and including July 5, 1935, defrayed all expenses incidental to the operations of the Association;

(b) On or about July 5, 1935, Respondent, through its officers, agents and employees, notified all of its employees that because of the passage of the National Labor Relations Act it could not thereafter continue to defray all expenses of the Association and suggested to its employees that they continue the Association as their bargaining agent, but that they make arrangements independently to finance the Association;

(c) On or about May 20, 1935, in anticipation of the passage of the Act, respondent through its then Assistant President, Mr. Dumas, and through other agents by agreement with officers of the Association undertook to and did pay all the expenses of a group of Association representatives incurred while such representatives were making a canvass of Respondent's employees throughout the Southern system collecting funds to finance the purported reorganization of the Association. Funds so collected continued to be received by the Association subsequent to the passage of the Act;

(d) Between on or about August 1, 1935, and February 1, 1936, representatives of the Association assembled in Atlanta, Georgia, on numerous occasions for the purpose of holding joint discussions with the management regarding revisions of the basic structure of the Association and its joint agreement with the Respondent. Expenses of Association representatives during such

meetings were defrayed by the Respondent, and in the course of such meetings Respondent's officers and agents instructed and advised Association representatives how to effect the purported reorganization of the Association.

(e) From on or about August 1, 1935, down to and including July 1937, Respondent permitted the free use without rental of company property and facilities and company time throughout its Southern system by the Association for the purpose of transacting the Association's business, soliciting employees to become members, holding meetings and transacting other business. On or about June 25, 1937, Respondent instituted the practice of charging the Association a nominal rental for the use of company premises for meeting purposes, but such rentals as were paid were nominal only and Respondent's continuation of the practice of permitting Association meetings to be held on its property constitutes substantial aid and support to the Association.

(f) Respondent has further supported the Association by permitting its officers, agents, and supervisory employees to discourage membership in any nationally affiliated labor organization, particularly the Union herein, for the purpose of encouraging membership in the Association.

49 (g) Respondent, by its officers, agents and employees, further supported and sponsored the Association by neglecting at any time to advise its employees of the discontinuance of its support of the Association and of their right to form, join or assist a labor organization of their own choosing without interference or coercion by respondent.

5. Respondent, by its officers, agents, and supervisory employees, in furtherance of its plan and course of action to support and control the Association, as described above in paragraph 4, and as a culmination thereof, has entered into and executed various contracts and agreements with the Association and subdivisions of the Association, which contracts and agreements as revised and agreed to during the year 1940 are now in effect. By reasons of the acts set forth above in paragraph 4 and by reason of other acts of interference by the Respondent from the time of its organization down to the time of the execution of the last agreements with the Association, the aforesaid agreements were entered into with a labor organization established, maintained and assisted by the Respondent in violation of Section 8 (2) of the Act, and the Association was not and is not the representative of Respondent's employees within the meaning of Section 9 (a) of the Act, and all such contracts and agreements now in effect are, therefore, void and should be set aside.

6. By its activities described in paragraphs 4 and 5, inclusive above, and by each of them and by other acts, Respondent did dominate and interfere with the formation and administration of a labor organization, and has contributed and is contributing financial and other support thereto, and did thereby engage in, and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (2) of the Act.

7. Respondent, by its agents, while engaged in business as described above, has interfered with, restrained and coerced its employees, and is interfering with, restraining and coercing its employees in their choice of a labor organization by the following actions:

(a) By permitting its officers, agents and supervisory employees to inform employees at its Shreveport, Louisiana, plant during the years from July 5, 1935, down to and including the date of the issuance of this Amended Complaint, to make statements to its employees indicating an antagonistic and hostile attitude on the part of the company toward affiliation by its employees with any labor organization other than the Association.

(b) By attempting to influence its employees in their choice of a labor organization by the use of threats and offers of inducements, particularly during the months of November and December 1940, and January 1941, at its Shreveport, Louisiana, plant.

(c) By causing to be circulated among its employees at Shreveport, during the months of November and December 1940, a rumor to the effect that all persons joining the Union would be discharged or demoted.

(d) By advising employees that the Union could do them no good and might do them harm, during the months of November and December 1940, at its Shreveport, Louisiana, plant.

8. By the acts alleged above in paragraph 7, and by each of them, Respondent through its agents has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (1) of the Act.

9. The aforesaid acts of the Respondent, as set forth in paragraphs 4, 5, 6, 7, and 8, inclusive above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (2), and Section 2, subsections 6 and 7 of the Act.

10. The aforesaid acts of the Respondent, set forth in paragraphs 4 through 8, inclusive above, occurring in connection with

the operations of Respondent described in paragraphs 1 and 2, inclusive above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Wherefore, the National Labor Relations Board on the 11th day of March, 1941, issues its Amended Complaint against the Southern Bell Telephone & Telegraph Company, Respondent herein.

NOTICE OF HEARING

Please take notice that on the 17th day of March, 1941, at ten o'clock in the forenoon, in Room 324, Old Post Office Building, Atlanta, Georgia, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with the Rules and Regulations, Series 2, as amended, Article II, Section 23, on the allegations set forth in the Amended Complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director of the Fifteenth Region, 630 Federal Office Building, New Orleans, Louisiana, acting in this matter as the agent of the National Labor Relations Board, an answer to the above Amended Complaint within ten (10) days of service of said Complaint.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 2, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of the said Rules and Regulations.

In witness whereof, the National Labor Relations Board has caused this, its Amended Complaint and Notice of Hearing, to be signed by the Regional Director for the Fifteenth Region on the 11th day of March, 1941.

C. H. LOGAN,
Charles H. Logan,

*Regional Director, Fifteenth Region
National Labor Relations Board.*

53 Before the National Labor Relations Board, Fifteenth Region

CASE No. XV-C-617

In the Matter of SOUTHERN BELL TELEPHONE & TELEGRAPH COMPANY (INCORPORATED) and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFFILIATED WITH A. F. L.

Motion of Southern Association of Bell Telephone Employees for leave to intervene

Received 12:00, Mar. 10, 1941, National Labor Relations Board, 15th Region

Southern Association of Bell Telephone Employees, hereinafter referred to as the Association, desiring to intervene in the proceeding stated in the caption hereof, presents this motion and for grounds thereof shows as follows:

1

The Association is an independent and unaffiliated organization of employees of Southern Bell Telephone & Telegraph Company and is a labor organization within the meaning of Section 2, subsection (5) of the National Labor Relations Act. The Association has been served with a copy of the charges and the complaint in the above entitled cause.

2

54 The Association has a membership of more than seventeen thousand (17,000), all members being employees of the Southern Bell Telephone & Telegraph Company, and the membership of the Association represents approximately eighty (80%) per cent of the eligible employees.

3

The Association has acted, and is acting, as the bargaining representative of the employees of the Southern Bell Telephone & Telegraph Company and, as such representative, it has dealt with the management of the Company from time to time in handling grievances of employees and in negotiating for and making contracts concerning wages and working conditions; and contracts concerning these matters are now in existence. Such contracts are of vital importance to the employees represented by the Association.

The Association denies that it is supported or dominated in any way by the Company, and asserts, on the contrary, that it is wholly free and independent of any such domination or support; and it desires to be accorded the right to intervene herein and to file appropriate pleadings and to introduce evidence to refute the charges and allegations insofar as the same relate to the Association.

Wherefore, the Association prays that it be allowed to intervene and file pleadings, in the nature of an answer to the allegations of the complaint insofar as said allegations may relate to the Association, and to introduce evidence and to be heard on the trial of the issues in this cause.

**SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES,**

By **T. L. LITTLE, President.**

Address: Trust Company of Georgia Building, Atlanta, Georgia.

55 *[Duly sworn to by T. L. Little; jurat omitted in printing.]*

56 **POWER OF ATTORNEY**

Received 12:00, Mar. 10, 1941, National Labor Relations Board,
15th Region

United States of America

Before the National Labor Relations Board, Fifteenth Region

Case No. XV-C-617

In the Matter of SOUTHERN BELL TELEPHONE & TELEGRAPH COMPANY (INCORPORATED) and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFFILIATED WITH A. F. L.

GEORGIA,

Fulton County.

Know All Men By These Presents: That Southern Association of Bell Telephone Employees, an unincorporated Association, hereby constitutes and appoints James A. Branch, Frank A. Hooper, Jr., Thomas B. Branch, Jr., and Samuel A. Miller, Attorneys at Law, collectively and severally as its attorneys to represent said Association in any and all matters directly or indirectly relating to the above entitled matter, with full power, collectively or severally, to appear for or enter the appearance of this Company and in all respects fully conduct any and all mat-

ters pertaining to or arising out of or in this proceeding, for or in its behalf or in its name.

Witness the signature of the President of Southern Association of Bell Telephone Employees pursuant to authority granted to said President by resolution of the General Executive Board of said Association, a certified copy of said resolution being hereto attached.

Executed this 8th day of March 1941.

SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES.

[SEAL]

By T. L. LITTLE, *President*.

Attest:

C. W. DENNIS, Jr.,

General Secretary-Treasurer.

GEORGIA,

Fulton County.

In person appeared T. L. Little, President of Southern Association of Bell Telephone Employees, an unincorporated Association, and Clifford W. Dennis, Jr., General Secretary and Treasurer of said Association, who as such President and General Secretary-Treasurer, respectively, acknowledged that for and in the name of and in behalf of said Association they signed, executed and delivered the above and foregoing instrument on the day and year therein named, and the said Clifford W. Dennis, Jr., as such General Secretary and Treasurer, affixed the seal of the Association thereto, each being thereunto duly authorized so to do.

Given under my hand and official seal this the 8th day of March 1941.

[SEAL]

CLIFFORD GREENE,

Notary Public,

Georgia, State at Large.

My Commission Expires Jan. 15, 1944.

58

Exhibit to motion

Received 12:00, Mar. 10, 1941, National Labor Relations Board,
15th Region

Southern Association of Bell Telephone Employees

[Emblem]

T. L. LITTLE, *Pres.*

G. M. TODD, *Vice-Pres.*

C. W. DENNIS, Jr., *Genl. Secy-Treas.*

231 Trust Co. of Ga. Bldg., Atlanta, Ga.

Resolved by the General Executive Board of the Southern Association of Bell Telephone Employees, in regular meeting held

March 7, 1941, that the President of the Association, Mr. T. L. Little, Esquire, is hereby authorized in behalf of the Association to execute to James A. Branch, Frank A. Hooper, Jr., Thomas B. Branch, Jr., and Samuel A. Miller, attorneys at law, such powers of attorney as may be required by National Labor Relations Board to enable said attorneys to intervene in proceedings now pending, to-wit, National Labor Relations Board against Southern Bell Telephone and Telegraph Company, and take such steps in connection with said proceedings as may be deemed necessary in behalf of the Association.

This resolution is passed by the General Executive Board at the request of Messrs. T. L. Little, B. O. Harmon, and C. W. Dennis, Jr., Special Committee heretofore appointed by the General Assembly of said Association with authority to act in connection with said proceedings.

STATE OF GEORGIA,

County of Fulton.

I, C. W. Dennis, Jr., General Secretary-Treasurer of the Southern Association of Bell Telephone Employees, certify that the above and foregoing is a true and correct copy of the resolution passed by the General Executive Board of said Association March 7th, 1941.

This 8th day of March 1941.

[SEAL]

Before the National Labor Relations Board, Fifteenth Region.

Case No. XV-C-617

In the Matter of SOUTHERN BELL TELEPHONE & TELEGRAPH CO. (INCORPORATED) and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFFILIATED WITH A. F. L.

Response of Southern Telephone and Telegraph Company to amended complaint

Respondent, Southern Bell Telephone and Telegraph Company, for answer to the amended complaint filed herein against it, says:

I

The allegations of numbered paragraphs 1, 2, and 3 are admitted.

60

II

Except as hereinafter specifically admitted, the allegations of numbered paragraph 4 (including paragraphs a, b, c, d, e, f, and g) are each and severally *seriatim* denied.

Further answering numbered paragraph 4 respondent says:

Prior to July 5, 1935, and on or about October 1, 1919, representatives of the employees of respondent, under the sponsorship of respondent, undertook to and did form a labor organization, composed of employees of respondent, known as Southern Association of Bell Telephone Employees, and thereafter up to July 5, 1935, at the special instance, request and demand of said Association, respondent contributed financial support and other concessions thereto.

Respondent avers, however, that since July 5, 1935, all support by respondent of said association, both financial and otherwise, has been withdrawn, and that respondent has engaged in no practice which under the National Labor Relations Act is an unfair labor practice, and avers that to the present time respondent has neither dominated nor attempted to dominate, within the meaning of said Act or otherwise, said association, nor in fact has said association been so dominated.

By way of further response specifically to paragraph numbered 4 (b), respondent admits that on or about July 5, 1935, it notified all of its employees of the passage of the National Labor Relations Act, but avers that on about said date and at various other times subsequent thereto, not only were they notified and advised of the withdrawal by respondent of financial support of the association,

but were further advised of their rights under said Act and of respondent's recognition of their rights fully and freely to enjoy the privileges granted employees under the Act; but specifically denies that respondent suggested to its employees that they continue the association as their bargaining agent.

By way of further response specifically to paragraph numbered 4 (c), respondent avers that the fund raised by the association on or about May 20, 1935, through voluntary subscriptions of the employees was wholly initiated by and effectuated through the efforts of the association without suggestion, assistance, or participation by respondent or any of its officers or agents; and that the payment by respondent of such expenses incurred by the association was in conformity with the obligation, agreement and practice of respondent with the association to defray all necessary expenses incurred by the association, which obligation and practice had been in effect for more than fifteen years prior thereto.

Respondent is without knowledge of the time when said funds were received by the association.

III

The allegations of paragraph numbered 5 are each and severally seriatim denied; except, respondent admits the existence of various

contracts and agreements between the association, representing respondent's employees as their collective bargaining agent, and respondent, which said contracts as revised or amended are in full force and effect.

IV

The allegations of numbered paragraphs 6, 7, 8, 9, and 10 are each and severally seriatim denied.

Now having fully answered the amended complaint herein against it, respondent for further answer thereto specifically says:

62

V

A. Respondent denies that since the passage of the National Labor Relations Act it has done any act or engaged in any activity or in any practice intended, designed, or having the effect of interfering with, restraining, or coercing its employees in the exercise of any right given, protected, or guaranteed by the National Labor Relations Act, and avers that respondent, in theory or in fact or otherwise, is not dominating nor has it dominated said association, and avers that said association is not and has not been so dominated.

B. Respondent, after having been advised that the International Brotherhood of Electrical Workers was seeking memberships among respondent's employees, and after respondent had been advised that the Southern Association of Bell Telephone Employees was to canvass its membership by signed ballot, on the 14th day of February 1941, posted a notice, Exhibit A hereto, on all bulletin boards, and, where no bulletin boards, in a prominent place in all buildings owned or leased by respondent; and therefore avers that by so doing respondent again intended to and did proclaim its strict neutrality.

Wherefore, respondent prays an order dismissing this amended complaint on its merits, and for such other proper relief, both general and special, to which it may be entitled under the law or in equity and good conscience.

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY,

By J. E. WARREN, President.

67 Edgewood Avenue, S. E., Atlanta, Georgia.

63

[Duly sworn to by J. E. Warren; jurat omitted in printing.]

Exhibit—Notice Issued by Southern Bell Telephone & Telegraph Co. To All Employees (Same as Exhibit A), omitted from the printed record, being heretofore copied at page 41.

64 *Intervention of Southern Association of Bell Telephone Employees*

Before the National Labor Relations Board, Fifteenth Region

Case No. —

In the Matter of: Southern Bell Telephone & Telegraph Company
(Incorporated) and International Brotherhood of Electrical
Workers, Affiliated with A. F. L.

Southern Association of Bell Telephone Employees, hereinafter referred to as Association, having applied for and been granted leave to intervene in the above stated cause, files this as its intervention and as its response to the allegations of the complaint (the complaint referred to herein being the amended complaint dated the 11th day of March 1941).

1

On information and belief, the Association admits the allegations contained in numbered paragraphs 1, 2, and 3 of the complaint.

2

Answering numbered paragraph 4, the Association denies the allegations therein contained, except as admitted or specifically answered herein. It denies the allegation and implication in said paragraph to the effect that this Association and its members are: or have been, under the domination of, or been interfered with by, Southern Bell Telephone and Telegraph Company, referred to as the Respondent; and the Association asserts, on the contrary, that it is an independent and legitimate labor organization entitled to act as the bargaining representative of its members and of the employees of the Respondent. Specifically answering the subparagraphs in said numbered paragraph 4, the Association answers as follows:

(a) It is admitted that on or about October 1st, 1919, an association bearing the same name as this Association was organized by and with the consent and approval of the Respondent and that the Respondent did defray the expenses of that Association up to about July 5th, 1935. Shortly thereafter, there was a reorganization of the Association. The Respondent does not now contribute any financial support to the Association and has not done so for some years.

(b) It is admitted that on or about July 5th, 1935, the Respondent gave notice to its employees that, because of the passage of the National Labor Relations Act, Respondent could not thereafter defray the expenses of the Association or of any labor organization representing its employees as bargaining representatives; and from that time the Respondent ceased to defray the expenses of the Association. It is denied that the Respondent suggested a continuation of the Association as the bargaining agent of its employees.

(c) Answering the allegation in subparagraph (c) of said numbered paragraph 4, the Association says that when it became apparent that the National Labor Relations Act would probably be enacted, various employees of the Respondent undertook to raise funds to defray the expenses of the Association so that the Association would not be dependent upon the financial support of the Respondent, and those employees solicited funds from
 66 employees of the Respondent throughout the territory covered by the Respondent's system, and, in this way, raised a temporary fund with which to defray the expenses of the Association and to make it independent of financial support by the Respondent. Subsequently, after the reorganization of the Association, those contributions were refunded from the funds of the Association arising from dues paid by its members.

(d) It is admitted that between on or about August 1st, 1935, and February 1st, 1936, various employees of the Respondent assembled in Atlanta, Georgia, and adopted a new constitution for the Association, which was to be submitted to the employees of the Respondent for ratification, and said new constitution was subsequently ratified, adopted and became effective. It is denied that the Respondent's officers and agents instructed or advised the employees as to the new constitution or the reorganization of the Association. On the contrary, the reorganization was effected by the employees of the Respondent of their own free will and without any domination whatsoever on the part of the Respondent; and the Association so formed was composed of a majority of the employees of the Respondent and was entitled to, and did, act as the bargaining representative of the employees.

(e) Subparagraph (a) is denied. It is true that up to about June 1937, the Respondent did not require the Association to pay rental for the privilege of the Association's members meeting on Respondent's premises where they worked; but since on or about June 25th, 1937, Respondent has required the Association to pay rental for any use of any of its premises by the Association; and such rentals which the Respondent has required and which the Association has paid are not mere nominal rentals but are

a fair rental value for such use of such property. It is denied that since on or about June 25th, 1937, the Respondent has, either directly or indirectly, rendered any financial aid or support to the Association.

(f) Subparagraph (f) is denied.

(g) Subparagraph (g) is denied.

3.

Answering numbered paragraph 5 of the complaint, the Association specifically denies that the Respondent maintains, assists, supports or controls the Association. It is admitted that the Association, as the bargaining representative of the employees of the Respondent, has from time to time bargained with the Respondent concerning wages, hours, and working conditions of Respondent's employees, and that, as a result of such bargaining, various contracts and agreements have been entered into between the Association and the Respondent, and that various such contracts and agreements are now of force and effect. These contracts and agreements were brought about as a result of bargainings between the Association and the Respondent. It is denied that such contracts and agreements are for any reason void; and it is asserted that, on the contrary, they are valid and secure for the employees of the Respondent valuable rights.

4.

The allegations of numbered paragraphs 6, 7, 8, 9, and 10, insofar as they in any wise relate or refer to the Association, are denied.

5

For further answer, the Association says:

(a) That it is an independent and legal labor organization; its membership consisting of approximately 17,400 employees of the Respondent. This number is much more than a majority of the entire number of employees of Respondent. The Association, as it is presently organized and constituted, is, and for a number of years has been, wholly free from any support, financial assistance, domination or interference by the Respondent. The Association represents the employees of the Respondent, acting as their bargaining agent or representative, and it has from time to time and on many occasions, represented the employees in grievances and complaints and in negotiating and securing for them concessions from the management as to wages, hours, and working conditions.

The employees of the Respondent, acting with full knowledge of their rights under the National Labor Relations Act and without any compulsion or influence on the part of the Respondent, chose the Association as their bargaining representative.

(b) Some months prior to the filing of the complaint the International Brotherhood of Electrical Workers (referred to as the Union) began a campaign, mainly at Shreveport, Louisiana, in an effort to get the employees of the Respondent to select it instead of this Association, as the bargaining representative of such employees, and after it had come to the attention of the Association that the Union was claiming that the Association was not a legal and valid and independent labor organization as recognized by the Act, the Association took steps to have a vote of its membership taken under such circumstances as to assure a free, unbiased, and uninfluenced expression of the wishes of its membership. Looking to this end, the Association, acting through its General Executive Board, on February 10th, 1941, notified the Respondent that pending the proposed vote, which was to be taken, the Association would cease to act as the bargaining representative of the employees; and the Association, following

69 this, sent out various communications to its officers and members fully advising them of what had been done in this respect and of the rights of the members under the Act. There was sent to each member a ballot to be marked by the member and to be returned to the firm of Seals & Pennington, certified public accountants. Hereto attached as an exhibit (marked "Exhibit A") is a true and correct copy of the report of said Seals and Pennington dated March 5th, 1941, showing the results of said balloting as of that date.

The Association is advised that since the report of Seals and Pennington was made on March 5th, 1941, a considerable additional number of ballots have been received by said accountants.

The Association respectfully submits that the result of this balloting demonstrates that the vast majority of the employees of the Respondent, of their own choosing, have designated this Association as their bargaining agent, and that in so doing they have acted freely and without any compulsion and with full knowledge of their rights under the Act.

Wherefore, the Association prays that the relief sought in the complaint, insofar as it would in any wise relate to or affect this Association, be denied.

SOUTHERN ASSOCIATION OF
BELL TELEPHONE EMPLOYEES,
By T. L. LITTLE, *President*.

[Duly sworn to by T. L. Little; jurat omitted in printing.]

Exhibit A to intervention

SEALS AND PENNINGTON,

ACCOUNTANTS,

ATLANTA, GEORGIA, March 5, 1941

Thos. D. Seals, C. P. A.

Geo. A. Pennington, C. P. A.

SOUTHERN ASSOCIATION OF
BELL TELEPHONE EMPLOYEES,*Atlanta, Georgia.*

Gentlemen: We have examined the ballots received by us through the United States Mails from your members through March 4, 1941.

These ballots (a specimen of which is hereto attached) constitute votes on the following two questions:

71 Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

We have made a careful test check of these ballots against the lists of employees shown on the lists of pay rolls deductions showing your membership which was furnished us by you representing the deductions made from the pay rolls of the Southern Bell Telephone & Telegraph Company, and the cards representing new applications for membership in your Association.

We hereby certify that of the 17,608 ballots reported to have been mailed, 15,969 have been received by us and tabulated as follows:

15,356 members answered "Yes" to these questions:

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

95 members answered "No" to this question:

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

and answered "Yes" to this question:

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

72 170 members failed to answer this question:

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

and answered "Yes" to this question:

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

165 members answered "Yes" to both of these questions, but failed to sign their ballots:

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

16 members answered "No" to both of these questions:

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Company?

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

23 members answered "Yes" to this question:

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

but failed to answer this question:

73 Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

64 made various remarks or failed to properly answer the questions asked by the ballots.

80 ballots mailed out were returned undelivered.

The ballots received by us, as above stated, are in our possession. Respectfully submitted.

SEALS & PENNINGTON,

By (S) G. A. PENNINGTON, C. P. A.

STATE OF GEORGIA,

County of Fulton.

Before the undersigned authority, who is duly authorized to administer oaths, personally appeared G. A. Pennington, who being duly sworn and on oath, says:

That he is a Certified Public Accountant and is a member of the firm of Seals & Pennington, Certified Public Accountants, Atlanta, Georgia, having an office in the Citizens & Southern National Bank Building, Atlanta, Georgia.

That the foregoing report to Southern Association of Bell Telephone Employees under date of March 5, 1941, is true and correct.

Deponent further says that the ballots referred to in said report were received in due course in the United States Mails and delivered to the office of Seals & Pennington and were opened, canvassed and tabulated by the firm of Seals & Pennington, Certified Public Accountants, and that the originals of the ballots so received are now in the possession of Seals & Pennington.

(S) G. A. PENNINGTON.

Sworn to and subscribed before me, this 5th day of March 1941.

(S) IRENE J. TAYLOR.

Notary Public,

Georgia State at Large.

[SEAL]

Local No. _____

This Is Your Ballot

See Inside of Envelope

Notice

This Ballot Must Bear the Signature of the Member Voting and Should be Sealed and Returned Immediately.

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

Answer:

Yes _____

No _____

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

Answer:

Yes ~~_____~~

No _____

Signature.

Date.

SEALS & PENNINGTON,
Certified Public Accountants,
1323 C. & S. Natl. Bank Bldg., Atlanta, Ga.

Before the National Labor Relations Board, Fifteenth Region

Case No. XV-C-617

In the Matter of SOUTHERN BELL TELEPHONE & TELEGRAPH COM-
PANY (INCORPORATED) and INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFFILIATED WITH A. F. L.

Amended intervention and answer

Now comes Southern Association of Bell Telephone Employees
and amends its intervention and answer heretofore by adding
thereto the following:

Seals & Pennington, certified public accountants, have made a
report as of March 17th, 1941, showing the number of bal-
lots received through March 16th, 1941, and the results
as of that time. A copy of the report above referred to
is hereto attached, marked Exhibit "B" and made a part hereof.

Wherefore, the Association prays that this amendment be al-
lowed.

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES,
By T. L. LITTLE, *President.*

[*Duly sworn to by T. L. Little; jurat omitted in printing.*]

Exhibit B to amended intervention and answer

Thos. D. Seals; C. P. A. Geo. A. Pennington, C. P. A.

SEALS & PENNINGTON

ACCOUNTANTS

ATLANTA, GEORGIA, March 17, 1941

SOUTHERN ASSOCIATION OF
BELL TELEPHONE EMPLOYEES,

Atlanta, Georgia.

GENTLEMEN: We have examined the ballots received by us
through the United States Mails from your members through
March 16, 1941.

These ballots (a specimen of which is hereto attached) consti-
tute votes on the following two questions:

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

We have made a careful test check of these ballots against the lists of employees shown on the lists of pay roll deductions showing your membership which was furnished us by you representing the deductions made from the pay rolls of the Southern Bell Telephone & Telegraph Company, and the cards representing new applications for membership in your Association.

78 We hereby certify that of the 17,608 ballots reported to have been mailed, 16,371 have been received by us and tabulated as follows:

15,713 members answered "Yes" to these questions:

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

98 members answered "No" to this question:

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

and answered "Yes" to this question:

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

172 members failed to answer this question:

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

and answered "Yes" to this question:

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

174 members answered "Yes" to both of these questions, but failed to sign their ballots:

79 Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

18 members answered "No" to both of these questions:

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

25 members answered "Yes" to this question:

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

but failed to answer this question:

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

67 made various remarks or failed to properly answer the questions asked by the ballots.

104 ballots mailed out were returned undelivered.

The ballots received by us, as above stated, are in our possession.

Respectfully submitted,

SEALS & PENNINGTON,

By G. A. PENNINGTON, C. P. A.

80 STATE OF GEORGIA,

County of Fulton.

Before the undersigned authority, who is duly authorized to administer oaths, personally appeared G. A. Pennington, who being duly sworn and on oath, says:

That he is a Certified Public Accountant and is a member of the firm of Seals & Pennington, Certified Public Accountants, Atlanta, Georgia, having an office in the Citizens & Southern National Bank Building, Atlanta, Georgia.

That the foregoing report to Southern Association of Bell Telephone Employees under date of March 17, 1941, is true and correct.

Deponent further says that the ballots referred to in said report were received by due course in the United States Mails and delivered to the office of Seals & Pennington and were opened, canvassed and tabulated by the firm of Seals & Pennington, Certified Public Accountants, and that the originals of the ballots so received are now in the possession of Seals & Pennington.

G. A. PENNINGTON,

Sworn to and subscribed before me, this 17th day of March 1941.

[SEAL]

IRENE J. TAYLOR,
Notary Public.

82 Before the National Labor Relations Board, Fifteenth
Region

Case No. XV-C-617

In the Matter of SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY and INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, AFFILIATED WITH A. F. L.

Intermediate report

Mr. Warren Woods, for the Board.

83 Mr. Marion Smith, Mr. E. W. Smith, and Mr. John A.
Boykin, Jr., of Atlanta, Ga., for the Respondent.

Mr. O. A. Walker and Mr. E. H. Williams, of Shreveport, La.,
Mr. G. X. Barker, of Birmingham, Ala., and Mr. George L. George,
of Atlanta, Ga., for the Union.

Mr. Frank A. Hooper, Jr., Mr. Samuel A. Miller, Mr. James A.
Branch, and Mr. Thomas B. Branch, Jr., of Atlanta, Ga., for the
Association.

STATEMENT OF THE CASE

Upon an amended charge¹ duly filed by International Brother-
hood of Electrical Workers, affiliated with the American Fed-
eration of Labor, herein called the Union, the National Labor
Relations Board, herein called the Board, by the Regional Direc-
tor for the Fifteenth Region (New Orleans, Louisiana), issued
its complaint dated February 17, 1941, against Southern Bell
Telephone and Telegraph Company,² Atlanta, Georgia, herein
called the respondent, alleging that the respondent had en-
84 gaged in and was engaging in unfair labor practices affect-
ing commerce, within the meaning of Section 8 (1) and (2)
and Section 2 (6) and (7) of the National Labor Relations Act, 49
Stat. 449, herein called the Act. Copies of the complaint, together
with notice of hearing thereon, were duly served upon the respond-
ent, the Union, and Southern Association of Bell Telephone Em-
ployees, herein called the Association, and alleged by the complaint
to be dominated by the respondent.

Respecting the unfair labor practices, the complaint alleged in
substance that the respondent: (1) on or about October 1, 1919,
formed the Association and thereafter, to the date of the com-

¹ The original charge was filed December 17, 1940; the amended charge was filed
January 15, 1941.

² Incorrectly designated in the formal papers as "Southern Bell Telephone & Tele-
graph Co. (Incorporated)" and corrected at the hearing, pursuant to motion, by counsel
for the Board.

plaint, dominated and interfered with its administration and contributed financial and other support thereto by paying its expenses to July 5, 1935; on that date notified its employees that it could not thereafter defray the expenses of the Association and suggested that they continue it as their bargaining agent and make arrangement for its independent financing; about May 20, 1935, paid the expenses of the Association in canvassing its members for the collection of funds, such funds continuing to be received after the effective date of the Act; from August 1, 1935, to February 1, 1936, paid the expenses of Association representatives meeting in Atlanta to revise the structure and joint agreement of the Association and advised them concerning such matters; from August 1, 1935, to July, 1937, permitted the free use of its facilities and property by the Association for the conduct of business and solicitation of membership, and after June 25, 1937, charged only a nominal rental for such privileges; permitted its agents to discourage membership in the Union so as to encourage membership in the Association; and failed to notify its employees at any time of its discontinuing its support of the Association and of their rights under the Act; (2) entered into contracts with the Association, those executed in 1940 being in effect when the complaint was issued, and (3) interfered with, restrained, and coerced its employees by permitting its managers at Shreveport, Louisiana, and other places to make statements antagonistic to labor organizations other than the Association; during November and December 1940, and January 1941, attempted to influence its employees in their choice of a labor organization by threats and inducements during November and December 1940, caused a rumor to circulate at its Shreveport, Louisiana, plant that employees who joined the Union would be demoted or discharged, and advised its employees that the Union would do them no good and might do them harm.

The respondent filed its answer dated February 26, 1941, denying the commission of any unfair labor practices.

On March 11, 1941, an amended complaint was issued by which the allegations respecting statements antagonistic to labor organizations by managers of the respondent, were limited to Shreveport, Louisiana. The respondent filed its answer to the amended complaint, dated March 15, 1941.

Pursuant to proper notice, a hearing was held March 17, through 21, 1941, in Atlanta, Georgia, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Association were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross examine witnesses, and to introduce evidence bearing on the issues, was afforded all parties.

At the opening of the hearing the Association was granted leave to intervene and filed its answer by which it asserted that it was free of domination by the respondent. On March 21, 1941, the Association filed an amendment to its answer expanding 86 certain information contained therein. At the close of the hearing, counsel for the Board moved to conform the complaint to the evidence; the motion was allowed without objection.

The parties were afforded, but waived opportunity to argue orally before the undersigned. They were also informed that they might file briefs with him. Briefs were received on behalf of the respondent and the Association; they have been duly considered by the undersigned.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Southern Bell Telephone and Telegraph Company, is a New York corporation, having its principal office in Atlanta, Georgia. It is one of 24 associated companies of the American Telephone and Telegraph Company which owns all of its issued stock. It conducts a general telephone business in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. It furnishes both local and long distance telephonic communication and its lines connect with those of: (1) the American Telephone and Telegraph Company and associated companies; (2) 837 other telephone companies in the States served by it; and (3) by wire, cable, and radio with those of foreign systems throughout the world. It serves numerous units of the armed forces of the United States, many defense industries, and approximately 140 broadcasting stations within its territory. It furnishes ship-to-shore communication.

87 As of March 1, 1941, the respondent served approximately 1,375,000 subscribers, employed approximately 23,000 persons, and its physical properties and equipment represented an investment of approximately \$315,000,000. During 1940, it purchased equipment and materials valued at "many millions of dollars", the greater part thereof from outside the territory served by it. During 1940, its gross revenues exceeded \$75,000,000, "several millions of dollars" thereof from interstate commerce.

The respondent admits that it is engaging in commerce, within the meaning of the Act.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Electrical Workers is a labor organization affiliated with the American Federation of Labor. It admits to membership employees of the respondent.

Southern Association of Bell Telephone Employees is an unaffiliated labor organization. It admits to membership only employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Interference with, domination of, and support given to the Association*

1. Organization of the Association

The Association was established in 1919 under the sponsorship of the respondent. Its purpose was provision of "facilities for the exchange of views and suggestions, for negotiations, either individually or collectively, between the employees and the Management. * * * "Joint agreements" were entered into 88 between the Association and the respondent respecting procedure for conferences between their representatives.

Applications for membership, though provided for in the Association constitution, were not uniformly required; no over-all membership list was maintained; the Association had no office and transacted its business on the respondent's premises; no dues for expenses were collected; and membership was restricted to white employees and those below supervisory grade. The respondent did not directly participate in the internal affairs of the Association and had no voice in naming its officers and committee, but defrayed all expenses of the Association and paid the salaries and expenses of employees engaged in Association business.

The respondent admits that it sponsored the Association and contributed financial and other support to it at all times from its creation to the effective date of the Act, July 5, 1935.

2. The Events of April 1935, to February 1, 1936; Changes in the Association

During April and May 1935, passage of the Act being considered imminent by the Association, it solicited a 50 cent contribution from each member. The respondent paid the salaries and expenses of the solicitors and extended them the use of its facilities, including automobiles. For example, Lloyd H. Weil, vice-presi-

dent of the Association, canvassed Louisiana and Mississippi and held meetings of the respondent's employees on its premises and time. He informed such meetings that: (1) passage of the Act would "outlaw" the Association; (2) it was the "consensus" of "quite a few of the officers of the Association" that the employees of the respondent should be represented by their own organization; and (3) to that end funds were vital. Local officials

89 of the respondent aided the canvass. One of them, A. F. Bear, district traffic manager at Shreveport, La., addressed the meeting conducted there and said that the respondent had supported the Association since 1919, and that the employees should now do so because the respondent would be unable to interfere in the event that outside organizations attempted to organize them.

The contributions to the Association amounted to about \$5,000. This sum was turned over to Jane H. Wilkes, general secretary of the Association, and for this purpose acting treasurer by appointment of Howard M. Askew, Association president since 1933.³

On July 12, Askew wrote the Association members informing them of the amount collected, and stated:

The fact that this Bill [the Act] has become law does not affect the status of our Association, so far as I am able to learn, except that its expense must be borne by the members instead of by the Company * * *. We will have the machinery for handling our problems in Local Joint Conferences and Mr. J. E. Warren, Vice-President, has assured me that if any matters are referred to the higher officers of the Association he will ask that the proper Management Representatives get in touch with such officer in order to handle these matters to a conclusion.

90 Askew added that "we should retain our present Association" and upon personal assurance given him by Warren,⁴ informed the membership that "the Management wished to cooperate with the Association in every way possible."

On July 16, Warren called a meeting in Atlanta of the respondent's ranking supervisory employees. Askew and Wilkes, of the Association, attended by invitation. Warren read Sections 7 and 8 of the Act to the meeting, stressed employees' right of self-or-

³ Askew had been State Cashier of Georgia since 1929. His duties were to pay the salaries of the respondent's employees and its expenses in that State according to information furnished him by the accounting department. While it does not appear that he had clear supervisory power, he was not engaged in ordinary plant work, his duties allied him more closely with the management of the respondent than with the other employees, and it is reasonable to assume that to such employees he represented the management. He thereby occupied a strategic position to translate to the employees the desires of the respondent. Askew resigned from the Association in 1939 because he was considered by the employees to be a supervisory employee. The undersigned finds the respondent responsible for the activities of Askew in conducting the canvass for contributions and in initiating the movement for a "new" Association which are discussed *infra*.

⁴ Warren, on account of the illness of the respondent's president, was then its acting chief executive. He succeeded to the presidency during August 1935.

ganization, and announced that the respondent would follow a "hands off" policy. The substance of his remarks was therefore transmitted by word of mouth to their subordinates by the respondent's more than 120 high officials.

On July 20, the respondent issued the following notice which came to the attention of its employees:

MEMORANDUM

Wagner Bill Interpretations

The Company can continue to pay salaries of Association officers who are filling their regular jobs and doing Association work incidental to their regular duties.

The Company can continue to pay the salaries of Association officers while engaged in conferring with Management and while they are meeting among themselves before or after these conferences to discuss their presentation or disposition of the matters involved. Salaries cannot be paid when Association officers are devoting their time solely to internal affairs of the Association.

91. The Company cannot pay traveling expenses. However, all Management Representatives are anxious to cooperate and will endeavor to meet Association officers at such times and places as will be most convenient and economical.

The Association may continue to use Company premises for their meetings without charge. Space for the exclusive full time use of the Association could not be provided without proper charge.

Association Local meetings cannot be held on Company time.

The Association may use Company typewriters and other office facilities when such is incidental to the regular Company use of these facilities. Out-of-pocket expenses such as stamps, stationery and supplies cannot be borne by the Company.

Association Representatives may make limited use of toll lines upon the same basis as is effective for employees generally.

The expense of preparation and distribution of the Minutes of Joint Conferences will be borne by the Company.

Issued July 20, 1935.

On August 26, a small committee of the General Assembly, governing body of the Association, met at Askew's call in the respondent's Atlanta office. The committee formulated certain changes in the constitution and joint agreement of the Association and obtained the agreement of the respondent through H. S. Dumas, assistant to Warren, that should the changed joint agreement be approved by the Association, the respondent would enter

into it. Dumas also agreed that the respondent would check off dues for the Association.

92 On August 30, a special meeting of the General Assembly "to formulate plans for financing and continuing this organization in accordance with the provisions of the Wagner Labor Relations Bill" was held in Atlanta. Askew resigned and was succeeded by Weil⁵ as president. Dumas addressed the meeting and informed those present that as an economy measure, joint conferences would be called in the future only at the request of the Association; that such meetings would no longer be used by the respondent for "discussions of sales, safety practices, etc.," and "where Management wished to use the facilities of the Association to broadcast information these meetings would be considered strictly as special meetings called by Management, the expense of which could be lawfully borne by them." The revised constitution⁶ and joint agreement were approved and it was resolved that weekly dues of 5 cents for women and 10 cents for men be collected from the membership.

The new joint agreement eliminated "all reference to the Company financing the expense of the Association," incorporated the new plan for calling joint conferences, was silent respecting recognition of the Association as the bargaining agent of the respondent's employees, and was terminable on 60 days' notice. Pursuant to Dumas' promise, it was signed by the respondent and the Association on September 3, 1935. Notwithstanding that it was by its terms effective on execution, both the respondent and the Association claim that an understanding existed that it was

93 not to become effective until such date as the new constitution should be ratified by the Association, and that pending such ratification, the Association did not exist. Weil, president of the Association on September 3, sent a letter to the members of the Association in which he referred to "our Association," the "revised constitution," and stated that "our employee body, as manifested in your recent special contribution, desires no outside influence in our ranks On September 11, in a letter to "All Local Chairmen" he stated, "your Association is on trial." He described modifications of the preamble and Article I of the constitution as changes, which "while not affecting

⁵ Weil was "plant practice supervisor" of the Louisiana Division of the respondent from 1935 to 1939. His duties were the distribution, clarification, and interpretation of plant routine instructions received from the head office of the respondent in Atlanta. What is said above respecting Askew, applies to Weil and the undersigned finds the respondent responsible for his activities in the Association. He became assignment office supervisor at New Orleans in 1939, in charge of 25 or 30 employees, but despite this maintained his membership in the Association.

⁶ It was ratified by the membership February 1, 1936, and is further discussed infra. All other joint agreements became effective as of the date of their execution.

⁷ Weil testified that he believed the passage of the Act to have ipso facto disbanded the Association. Wilkes testified that the Association did not exist between September 3, 1935, and February 1, 1936.

the operation of our plan, were desirable in that they eliminated many references to the Company"; other changes or "proposals" were referred to as "amendments." Wilkes, in a communication of September 18, pointed out that "this proposed Constitution is in reality an Amendment to your present plan. * * *". The new constitution was by its own terms, "a revision [which] is hereby adopted superseding the Constitution effective May, 1934," and provided prerequisites of one and 5 years' membership in "the Association" for holding local office and for the office of president, respectively.

The resolution for collection of dues⁹ adopted by the General Assembly was approved by a required majority and Wilkes¹⁰ on October 1, 1935, sent membership applications and check-off authorizations to "Local Chairmen" of the Association for signature by employees. In her instructions respecting these matters, she pointed out that memberships applications were to be signed "by each member who desires to continue his or her membership in the Association * * *" and "when requesting the present members of your Local to sign the new applications for membership * * * it should be explained that the purpose of this form is to provide the officers of the Association with a complete and uniform record of membership in the Association and is not to be considered as a new application for membership." Beginning November 1, the respondent began deduction of dues from the salaries of those who had authorized such procedure. The dues were then paid over to the Association.

On February 1, 1936, the revised constitution¹¹ having received ratification, the joint agreement signed September 3, 1935, went into effect. A majority of eligible employees were members of the Association. Weil and Wilkes continued in office, the latter as general secretary-treasurer. The Association bank account remained in the same bank as before and in her name, her new title being substituted for acting treasurer.

During the period discussed above, all communications from the Association, including membership applications and dues deduction authorizations, and all communications to it, were handled by the respondent's inter-office mail facilities. The respondent

⁹ This document stated in part, the "Association is threatened with impairment, an emergency is declared to exist."

¹⁰ Wilkes was secretary to the general commercial manager and the chief engineer of the respondent at Atlanta from 1934 to 1940, when she became personnel supervisor over the entire territory of the respondent, working under J. S. Kerr, assistant to the president.

¹¹ Paragraph 1 of the preamble read:

The employees of the Southern Bell Telephone and Telegraph Company, Incorporated, formed in 1919 the Southern Association of Bell Telephone Employees to provide facilities for adjusting by conference and cooperation all questions affecting the employees and the Management. This relationship between the Association and the Company has been in continuous operation since that time.

furnished the Association information of the number of employees eligible for membership in it, extended the use of its facilities and premises for holding meetings, paid the salaries of Association members for time spent before, during, and after conferences with officials of the respondent on Association business, and permitted the use of its toll lines by officers of the Association if calls were made incidental to the respondent's business. Association mimeographing was performed by the respondent but was paid for monthly by the Association, beginning August 1935.⁴² The general secretary used space in the respondent's offices for Association business without charge; the respondent permitted the free use by the Association of its typewriters, office facilities, and bulletin boards, and made no charge for deducting dues.

Both the respondent and the Association contend that after distribution of the July 20, 1935, notice by the respondent, that by virtue of such distribution, the termination "to a very large extent" of the respondent's financial support of the Association in accordance with such notice, and the dissemination of Warren's remarks of July 16, the Association was released of the ties which theretofore bound it to the respondent.

The significance of Warren's remarks, even assuming them to have been more informative to the employees of their rights under the Act than is disclosed by the record, is small. They were verbally transmitted, and since they were made but 4 days before publication of the notice, it must be assumed that in many instances they were brought to the attention of the employees only after receipt by them of the written notice. The notice was therefore the controlling announcement of the respondent respecting the Association. Far from stating the "hand-off" policy announced by Warren, such notice in fact announced an assumption on the part of the respondent that the Association would continue to exist and function. Under all the circumstances it constituted a tacit instruction to the employees that they act to that end.

96 Furthermore, the \$5,000 in contributions, received in part after July 5, 1935, resulting from the canvass financed by the respondent and enabling the Association to carry on from that date to November, when deductions of dues began, is not to be overlooked. All contributions were later returned by the Association to those making them, but not until December 1936, when it was for the first time financially able to do so. The respondent was never refunded for its expenses in this connection. Moreover,

⁴² This arrangement continued until February 1938, at which time the Association bought its own mimeograph machine.

the respondent never removed the impact upon its employees of its assistance to the Association in collecting such funds and its reasons therefor.

The contention that a break occurred between the respondent and the Association rendering employee activity for self-organization free and uninspired as of July 20, 1935, is therefore rejected by the undersigned. From the facts related above it is clear that the employees correctly read and understood the notice. Weil and Wilkes, the dominant figures in the Association, sought to reconcile their contention that a new organization came into being on February 1, 1936, with the inconsistent findings above by pleading unfamiliarity with technicalities, ill-advised use of significant terms, and the absence of counsel. Weil, however, testifying with respect to occurrences in 1937, stated that the Association did not then have counsel because "we had quite a few of the boys in our organization who were members of the Association who had studied law. * * *". There is not showing that competent advice was unavailable to the Association in 1935-6. Both Weil and Wilkes while on the witness stand, gave indications of education, were articulate, and demonstrated complete qualification for affairs of the sort managed by them in connection with the Association. The undersigned therefore finds that Weil and Wilkes, as demonstrated by their authorship of the documentary evidence described above, were motivated by a desire to continue the Association unchanged except for concessions respecting its more obvious financial support by the respondent. This was in accordance with the latter's own manifest wish.

3. The Events of February 1, 1936, to February 1941; Continuing Support of the Association

The minutes of the annual meetings of the General Assembly for 1936 to 1939, inclusive, refer to such meetings as the "17th" to "20th Annual Meeting[s]". The preamble of the constitution remained unchanged during these years and likewise placed the beginning of the Association's relationship with the respondent in 1919.

Weil continued as president until 1939, was its vice-president in 1940, and was still a member at the time of the hearing. Wilkes continued as general secretary-treasurer until 1938, when she became vice-president-treasurer. She resigned her office and membership in 1939, when she became personnel officer of the respondent.

At the 1936 meeting of the General Assembly, it was resolved that the respondent be requested to restore salary and wage cuts

then in effect. The reaction of the respondent thereto, while sympathetic, was negative. After the meeting, Wilkes wrote the division chairmen, on February 28, stating in part: "But try to remember, keep your people happy and lead them to be patient. We don't, I believe, have an awful lot to worry about. But you must help them to remember that our Company is run on sound and sensible measures and it is the duty of our Management to keep it so for the continued welfare of us all. We must approach Management with the same sound and sensible tactics."

On August 28, however, Weil wrote the division and local 98 chairmen of the Association announcing a \$450,000 wage increase granted by the respondent after negotiations with it. He warned them "that this information is not yet generally known and should not be discussed by you until such time as your Management Representative has been informed of the details and has gone into the matter thoroughly with you." After an interval during which the respondent's officials were presumably themselves apprised of the fact and details thereof, the increase was announced to the employees, not by the respondent, but through the "State Officers of the Association."

In January 1937, the respondent prepared and distributed to all employees the following notice:

MEMORANDUM

WAGNER BILL INTERPRETATIONS

The Company can continue to pay salaries of Association officers while engaged in conferring with management and for incidental time while they are meeting among themselves before and after these conferences to discuss their presentation or disposition of the matters involved. Salaries cannot be paid by the Company while Association officers are devoting their time solely to internal affairs of the Association.

The Company cannot pay traveling, board and lodging expenses for employee representatives while engaged in Association business.

Space for the exclusive full time use of the Association cannot be provided by the Company without proper charges. The Association should be billed for Company office space used by the General Secretary for Association business.

99 Association Local Meetings cannot be held on Company time.

Out-of-pocket expenses, such as stamps, stationery and supplies, cannot be borne by the Company and Company mail cannot be used for Association business.

The Company cannot permit the use of its toll lines free of charge for purely Association business. The Company cannot provide free of charge telephones used exclusively for Association business.

The expense of preparation and distribution of a limited number of minutes of Joint Conferences will be borne by the Company.

The Company will discuss with the Association officers the question of proper charges for collecting association dues and the necessary procedure for making this effective.

Revised January 1937.

In April 1937 the following revision was likewise distributed by the respondent:

NATIONAL LABOR RELATIONS ACT

MEMORANDUM FOR SOUTHERN BELL TEL. AND TEL. CO.

The National Labor Relations Act prohibits an employer from contributing financial or other support to any labor organization; "Provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay."

In view of the provisions of this Act, the following summary is provided to be observed by this Company in dealing with the Southern Association of Bell Telephone Employees.

1. The Company can pay salaries of association officers while engaged in conferring with Management. The Company cannot pay salaries of association officers under the following conditions:

(a) While they are meeting among themselves before and after joint conferences to discuss their presentation or disposition of the matters involved.

(b) While association officers are devoting their time solely to internal affairs of the association.

2. The Company cannot pay traveling, board and lodging expenses for employee representatives while engaged in association business.

3. The Company should charge a fair rental rate when members of the association use Company space for the purpose of conducting association business or for holding their monthly local meetings. These charges should be calculated on the proportional cost to the Company for the space used.

NOTE.—The Company is now reviewing with the association officers the charges for such space.

4. The Company cannot permit the use of its toll lines for association business except at full tariff rates.

5. The Company cannot provide telephones for conducting association business except at full tariff rates.

6. The Company cannot permit elections on Company time and any Company premises used for this purpose should be confined to space rental as a meeting place.

101 7. Company Bulletin Boards cannot be used for posting association activities, notices or bulletins.

NOTE.—The Company is now reviewing with the association officers the matter of space which they might desire to rent for Bulletin Boards.

8. The Company can pay for copies of minutes of joint conferences for distribution to employees attending the joint conference meetings. The Company cannot pay for extra copies of these minutes for distribution among other members of the association.

9. The Company mails are not to be used for association business.

10. The Company has an agreement with the association officers for making payment for the cost of collecting dues under the payroll deduction plan. The Company cannot incur the expense without making the proper charges.

11. The Company cannot engage in any activity designed to induce or prevent its employees from joining this or any other labor organization.

12. Association Local Meetings cannot be held on Company time.

13. Out-of-pocket expenses, such as stamps, stationery and supplies for association business, cannot be borne by the Company.

14. The provisions of this Act make it illegal for an employer to dominate or interfere with the formation or administration of any labor organization, and the Management of this Company should conscientiously observe these provisions.

Revised April 1937.

102 The changes in the relationship between the Association and the respondent indicated by the two notices were made. The Association thereafter paid for its use of toll-lines, for dues deductions at the rate of one-half cent each, and for meeting places on the respondent's property at 75 cents for four hour meetings and \$1.50 for longer meetings; the Association rented an office in the respondent's Atlanta headquarters at \$84 per year;¹² and the respondent ceased to pay the salaries of Association representatives except for such time as they actually spent in conference with it.

¹² This arrangement was abrogated by the Association on November 1, 1937, when it took quarters in another building.

The Association retained counsel in 1939, and the March 1940, meeting of the General Assembly changed the preamble of the constitution, to be effective September 15, 1940, to read as follows:

The Southern Association of Bell Telephone Employees was formed on the 30th day of August, 1935, subsequent to the passage of the National Labor Relations Act, known as the Wagner Act, supplanting a former organization of employees by the same name.

Minor revisions were made in the constitution, but its provisions remained substantially unchanged. The minutes of this meeting referred to it as the "5th Annual Meeting."¹⁴ They were prepared by Clifford Dennis who succeeded Wilkes in 1939.

The 1940 joint agreement between the Association and the respondent was dated July 30, and together with other contracts entered into by the parties pursuant to its terms, was in effect at

the time of the hearing. It provided that "the Association
103 having certified to the Company that it has not less than

14,500 members in good standing who are employees, the Company agrees that this number constitutes a majority of the employees" and granted sole recognition to the Association for purposes of collective bargaining.¹⁵ Prior contracts were silent respecting recognition. The agreement provided that it remain in effect for one year, be thereafter renewable for periods of one year, but subject to cancellation by either party on 60 days' notice. Prior contracts were merely cancellable on notice and were silent as to how long they were to be effective.

The Association does not endeavor to maintain a large surplus and as of the time of the hearing refunded 25 per cent of the amount collected by it from dues to its locals. In December 1940, the funds of the Shreveport local were kept in the desk of the respondent's chief operator there.¹⁶

(4) The Events of February and March, 1941

On February 10, 1941, the Association having been previously informed that a complaint charging its domination by the respondent would be issued by the Board, wrote Warren of this fact, stating that "because such a charge clouds this Association's right to represent the employees of the Company," the Association, pending a canvass of its membership by signed ballot, would not

¹⁴ It will be remembered that both minutes and constitution had theretofore rated the Association back to 1919.

¹⁵ Prior contracts, like this one, were entered into by the respondent without proof of the Association's representation of the majority of the employees. J. S. Kerr, assistant to Warren, testified that the respondent had knowledge of the Association's membership through the check off of dues.

¹⁶ Filing of the charge resulted in investigation at Shreveport by a Board Field Examiner. Thereafter the Association local transferred its funds to a bank.

act as the bargaining representative of the employees. The letter also called attention to the fact that a union "is seeking to organize certain of your employees."

On February 11, Warren acknowledged this letter and at 104 the same time instructed his staff to refrain from in any way interfering with or influencing employees in their choice of representatives. Notices were posted on its bulletin boards at 2173 places by the respondent. They set forth Sections 7 and 8 of the Act, and stated:

The Company Recognizes Its Employees' Right to Join, Form or Affiliate With Any Labor Organization of Their Own Choice and Freely to Exercise All Rights Secured Them by This Act.

The Company Guarantees Its Strict Compliance With All the Provisions of This Act and That No Employee Will Be Discriminated Against or Suffer Any Other Penalty Because of His or Her Exercise of Any Right Secured by This Act.

The Company Is Not Interested in Whether Its Employees Join or Do Not Join Any Labor Organization.

The Association thereafter polled its members by means of signed ballots. More than 15,000 members indicated that they wished the Association to represent them in collective bargaining and that they desired to continue membership therein.¹⁷

On February 28, the Association wrote Warren informing the respondent of the result of its canvass and demanded exclusive recognition.¹⁸ Warren replied on March 3 and asked for copies of letters relating to the balloting sent out by the Association, the affidavit of the public accountant who tabulated the votes, and a copy of the ballot used. This material was sent to Warren on

March 5. On March 6 he wrote the Association recognizing it as the "authorized collective bargaining agent of the 105 employees of this company" and so informed his staff, asking that they "be governed accordingly."

Warren testified that the respondent did not regard the Association's letter of February 10 to have constituted cancellation of the contract then in effect between them. It was not reexecuted after March 6, and the parties have thereafter continued to conduct their mutual affairs pursuant to its terms.

(5) Conclusions

The respondent sponsored the Association as an advisory agency supported by it for adjusting differences with employees within

¹⁷ As of March 16, 1941, 15,713 members of the Association had so voted.

¹⁸ Such recognition had not been withdrawn by the respondent. In his February 11 letter to the Association, Warren merely "noted" that pending the canvass, it would not act as bargaining agent of the respondent's employees.

management limitations. It was formed, existed, and functioned only through the respondent's control, financial support, and sufferance.

With the passage of the Act, the respondent therefore had a plain duty to its employees. As stated in the *Western Union* case:¹⁹

* * * an unaffiliated union, known for long to be favored by the employer, carries over an advantage which necessarily vitiates its standing as exclusive bargaining agent. It cannot remain such until measures are taken completely to disabuse the employees of any belief that they will win the employer's approval if they remain in it, or incur his displeasure if they leave.

Rather than so disabusing its employees, the respondent tacitly instructed them to continue the Association and merely withdraw its more obvious financial support. Minor revisions in the

106 Association were accomplished by Askew, Weil, and Wilkes.

Askew ceased his activities before the revision was completed, but both Weil and Wilkes continued their leadership of the Association for several years thereafter. Such duplication of personnel coupled with substantial continuity of existence is indicative of continued domination by the employer.²⁰

The Association, which originated in 1919, continued after the effective date of the Act, substantially unchanged, and not only without any "line of fracture,"²¹ but without so much as a change in name. Shortly after the effective date of the Act, the respondent executed a contract with the Association, made its membership and dues deduction campaigns possible, and extended it other support as more fully outlined above.

In January and April 1937, revised notices setting forth the respondent's position respecting the Association were issued. Both assumed that the Association continued unchanged except as affected by further withdrawal of financial support to it by the respondent.

In February 1941, the respondent for the first time made an unequivocal announcement to its employees of their rights under the Act. It once more failed, however, to disassociate itself from the Association by any announcement of its discontinuance of countenance thereof. The effect of the domination and support of the Association by the respondent prior to and during the years since 1935, could not, under the circumstances, be dissipated except

¹⁹ *Western Union Telegraph Company vs. N. L. R. B.*, 113 F. (2d) 992 (C. C. A. 2).

²⁰ *International Association of Machinists vs. N. L. R. B.*, 110 F. (2d) 29 (App. D. C.), enforcing *Matter of Merrick Corporation and International Union, United Automobile Workers of America, Local 459*, 8 N. L. R. B. 261, aff'd 311 U. S. 72. See also *Roebbing Employees Association, Inc. vs. N. L. R. B.* (C. C. A. 3), decided April 28, 1941.

²¹ *Westinghouse Electric Mfg. Co. vs. N. L. R. B.*, 112 F. (2d) 657 (C. C. A. 2), aff'd 61 S. Ct. 736.

by an explicit announcement to the employees that the respondent would no longer recognize or deal with it. In the absence of such action by the respondent, its employees were not afforded the opportunity to start afresh in organizing for the adjustment of their relations with the employer which they must have, if the policies of the Act are to be effectuated.²²

The undersigned has carefully reviewed the minutes of the numerous conferences between the respondent and the Association which are in evidence and has fully considered their bearing upon the question to be resolved. Inasmuch as they do not alter the ultimate conclusions made by him, the undersigned does not consider it necessary to analyze the matters discussed at such conferences nor the manner in which they were disposed of.²³ "Here no one fact is conclusive. But the whole congeries of facts"²⁴ supports the conclusions reached.

The undersigned finds that the respondent, by the above-described course of conduct, has dominated and interfered with the formation and administration of Southern Association of Bell Telephone Employees, has contributed financial and other support thereto, and has thereby interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

B. Other interference, coercion, and restraint

During the fall of 1940, the Union began organizational activity at the respondent's Shreveport plant. A special local of the Union for employees of the respondent was established there on December 4, 1940. The Union's activity was known to the respondent.

108 Shortly after the local was formed, E. B. Mason, district traffic manager of the respondent at Shreveport, told long distance supervisor Lora Sibley, "Mrs. Sibley, if you have any influence with your people, you should influence them against the union." Sibley thereafter told two operators that "we really did not need the union; that the Association was everything that they had or could get, you know, and I did not feel like that they would get any better than that, than they did out of the Association."

About March 1, 1941, Hazel Böstick, toll operator at Shreveport, and chairman of the Association local there, resigned her office.²⁵ She gave as her reason for resigning that she believed Mason

²² N. L. R. B. vs. Newport News Shipbuilding and Dry Dock Company, 308 U. S. 241.

²³ Cf. Matter of Phelps Dodge Corporation, Copper Queen Branch, Smelter Division, and Southern Arizona Smeltermen's Union, Local No. 470, International Union of Mine, Mill, and Smelter Workers, C. I. O., 28 N. L. R. B. No. 73; see also N. L. R. B. vs. Pennsylvania Greyhound Lines, Inc., 303 U. S. 261.

²⁴ N. L. R. B. vs. Link Belt Co., 61 S. Ct. 358.

²⁵ She had applied for membership in the Union during November 1940.

had not properly considered a grievance advanced by her as chairman of the Association local. Proceedings to select her successor were held on the respondent's premises shortly after her resignation. Before balloting on this question, Ina Lee Burrows, operator, met Vivian McCain, employment supervisor, in the rest room. According to Burrows, McCain inquired which side she was on; Burrows replied, "I am on my own side"; McCain then told Burrows, "It is a shame we can't fire all of these old dissatisfied employees and replace them with new girls that would be appreciative of their jobs." McCain testified that she merely inquired of Burrows, "Which side are you on?" and that she had reference to Bostick's successor. In effect, McCain denied making the statement attributed to her by Burrows regarding the discharge of "dissatisfied employees." The undersigned accepts Burrows' testimony as being in substantial accord with the facts. McCain's remarks respecting dissatisfied employees clearly referred to Bostick. Under the circumstances they were inimical to the Union.

The undersigned finds that the respondent by the statements and acts of Mason and McCain, described above, has
109 interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce, and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in and is engaging in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the respondent has dominated and interfered with the administration of Southern Association of Bell Telephone Employees and contributed financial and other support thereto, the undersigned will recommend that it cease and desist from such practices. Since the effects and consequences of such practices with respect to the Association and its continued recognition as a bargaining representative, constitute and will constitute a continuing obstacle to the free exercise by the respond-

ent's employees of their right to self-organization and to bargain collectively through representatives of their own choosing, the undersigned will recommend that the respondent withdraw all recognition from, and completely disestablish the Association as the representative of any of its employees for the purpose of dealing with the respondent respecting grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment.

Having found that the respondent entered into contracts with the Association embodying recognition of the Association as such representative, and that such contracts were the result of and tend to perpetuate the effects of the respondent's unfair labor practices, the undersigned will recommend that the respondent cease and desist from giving effect to or performing any contract between the respondent and the Association relating to rates of pay, wages, hours of employment, and other conditions of employment, now existing, and to refrain from entering into, renewing, or extending any contract with the Association relating to such matters. Nothing in this Intermediate Report or in the recommendations hereinafter set forth, should be taken, however, to require the respondent to vary those wage, hour, and other substantive features of its relations with the employees themselves, if any, which the respondent established in performance of any contract as extended, renewed, modified, supplemented, or superseded.

Upon the foregoing findings of fact, and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. International Brotherhood of Electric Workers, affiliated with the American Federation of Labor, and Southern Association of Bell Telephone Employees, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. The respondent by dominating and interfering with the administration of Southern Association of Bell Telephone Employees, and contributing financial and other support thereto, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. The respondent by interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned hereby recommends that the respondent, Southern Bell Telephone and Telegraph Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) In any manner dominating or interfering with the administration of Southern Association of Bell Telephone Employees, or with the formation or administration of any other labor organization of its employees and from contributing financial and other support thereto;

(b) Recognizing Southern Association of Bell Telephone Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment;

(c) Giving effect to, or entering into, any contract or arrangement with Southern Association of Bell Telephone Employees relating to rates of pay, wages, hours of employment, or other conditions of employment;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Southern Association of Bell Telephone Employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said Southern Association of Bell Telephone Employees as such representative.

(b) Immediately post notices to its employees in conspicuous places throughout all its offices, plants, and places of business and maintain such notices for a period of not less than sixty (60) consecutive days from the date of posting, stating: (1) that the respondent will not engage in the conduct from which it is recommended to cease and desist in paragraphs 1 (a), (b), (c), and (d) hereof; and (2) that it will take the affirmative action set forth in paragraph 2 (a) hereof;

(c) File with the Regional Director for the Fifteenth Region on or before twenty (20) days from the date of the receipt of a

copy of this Intermediate Report, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

113 It is further recommended that unless on or before twenty (20) days from the receipt of the Intermediate Report the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

*Any party may within thirty (30) days after the date of the order transferring this case to the Board, pursuant to Section 32 of Article II of the Rules and Regulations—Series 2, as amended, of the National Labor Relations Board, file a brief with the Board, Shoreham Building, Washington, D. C. Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within twenty (20) days after the date of the order transferring the case to the Board, pursuant to said Section 32 of Article II.

JOSEF L. HEKTOEN,

Josef L. Hektoen,

Trial Examiner.

Dated June 16, 1941.

115 Before the National Labor Relations Board, Fifteenth Region

Case No. C-1911

In the Matter of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY (INCORPORATED) and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFFILIATED WITH AMERICAN FEDERATION OF LABOR.

Exceptions to intermediate report

Received Original and 4 Copies of Exceptions

National Labor Relations Board, Jul. 12, 1941, Docketed S.

The Southern Bell Telephone and Telegraph Company files the following exceptions to the Intermediate Report of the Trial Examiner:

1. The Trial Examiner has found, referring to the canvass for members in 1935, "local officials of the respondent aided the canvass." No such sweeping finding is justified by the evidence. If it happened at all it was only in one isolated instance, which was not of any real moment (Shreveport).

2. The Trial Examiner has found in a footnote on page 89, that "the undersigned finds the respondent responsible for the activities of Askew in conducting the canvass for contributions and in initiating a movement for a new association." In point of fact the evidence does not justify any such finding. It requires a finding that Askew was not a supervisory employee; that he had no one working under him; that he had always been active in organization matters; and that in the particular matter he was acting on his own initiative and not carrying out directions, either directly or indirectly, given by the respondent. The evidence requires a finding that Askew had a legal right to engage in whatever organization activities he wished to undertake, and that the respondent would have been guilty of a violation of law had it attempted to interfere with him.

3. Respondent also excepts to the finding in said footnote on page 89 that Askew was more closely related to management than with the other employees and that to the employees he represented management and that he occupied a strategic position to translate to the employees the desires of the respondent. The ground of this exception is that all of these findings are wholly without evidence to support them and contrary to the undisputed evidence in the case.

4. Respondent excepts to the part of the Intermediate Report in which the Trial Examiner undertakes to make findings with respect to Mr. Warren's conference and directions on July 16, 1935. The Examiner's findings on this critical point are so meager and inadequate as to deny to respondent the full benefit of the facts with respect thereto, which are shown by stipulations and wholly uncontradicted evidence. The Trial Examiner should have found, but did not find, the following:

(a) Promptly after the passage of the National Labor Relations Act, Mr. J. E. Warren, then respondent's Vice-President in Charge of Operations, now its President, on July 16, 1935, called a meeting in Atlanta of all of the principal officials of respondent, both general and of the nine States in which the Company operates, for the purpose of giving directions on respondent's policy with respect to the act. At this conference there were also the chief staff assistants of the general departmental heads, as well as the then President and General Secretary of the then existing Southern Association of Bell Telephone Employees.

(b) At this meeting Mr. Warren read extensively from the National Labor Relations Act, laying especial emphasis on Sections 7 and 8, and explained to those in attendance the rights of employees under these provisions as well as the duties and obligations of management thereunder. He further stated in substance

that the employees had a right to do whatever they wished about labor organizations; that employees had a right to select their own representatives and their own unions or associations, and that management must exercise an absolute "hands-off" policy; that it was and would be the policy of the Company to observe the act to the letter and spirit.

(c) At the conference Mr. Warren directed the officers of the Company and the State officials to call in their subordinates with supervisory power and fully instruct them as to the rights of employees and the obligation of the Company under the National Labor Relations Act and the Company's policy of strict observance of and compliance with both the letter and spirit of the act. He instructed those present to promptly communicate the Company's policy to all such supervisory employees and to inform the entire employee body of the Company's policy as announced in the meeting, and of their rights under the law and the Company's policy strictly to recognize and respect all of their rights, as well as the Company's complete neutrality with regard to all labor organizations or activities.

(d) These directions of Mr. Warren were promptly carried out and his statement as hereinbefore recited as to the rights of employees under the National Labor Relations Act and of the duty of management under the act, and of the policy of 118 respondent to obey the act strictly and to maintain neutrality in all labor organization matters, were promptly and fully transmitted to all supervisory personnel and to the entire employee body of the Company.

(e) The entire body of employees of the Company were promptly following the July 16, 1935, meeting, advised in accordance with the directions given by Mr. Warren.

5. Respondent further excepts to the report in that the Trial Examiner did not find, but should have found, that these directions of Mr. Warren were fully carried out by his subordinates. The stipulations and undisputed evidence demanded that the Trial Examiner make certain findings in this report which he has not made, to-wit:

(a) The policy of respondent with reference to the National Labor Relations Act and the rights of its employees and the obligations of respondent thereunder has not been changed since its pronouncement by Mr. Warren at the July 16, 1935, conference, and has been carried out in good faith.

(b) Neither respondent nor any of its supervisory personnel, either before or after the passage of the National Labor Relations Act, has discriminated against any employee or organization of employees on account of any labor activities or on account of an employee joining or not joining any labor organization.

(c) Neither before nor after the passage of the National Labor Relations Act has respondent or any of its supervisory personnel in any wise intimidated, coerced, or used force or threat thereof, or offered any inducement to any of its employees for or on account of any of its employees' labor organizational activities or on account of any of its employees joining or not joining any labor organization; nor, except in one isolated instance, at Shreveport, Louisiana, has respondent or any of its supervisory personnel undertaken to influence any of the employees with respect thereto.

(d) Respondent's policy toward its employees of respecting its employee's entire freedom as to labor organization matters has been and is well understood by them. The only instance suggested in the record of any effort to influence an employee in the matter of labor organization occurred at Shreveport, Louisiana, on or about December 1, 1940, namely, the claim that Mr. Mason, Traffic Manager at that exchange, asked Mrs. Sibley, a supervisor operator, to use her influence with the operators not to join the I. B. E. W. Pursuant to this request, Mrs. Sibley spoke to two operators.

Mr. Mason's statement to this supervisor operator was directly contrary to the fixed policy of the Company, well understood by him. Shortly after the incident, Mr. Garner, General Traffic Manager, having learned that rival labor unions were trying to organize traffic operators at Shreveport, reminded and instructed Mr. Mason of the Company's fixed policy of absolute neutrality with regard to labor organizations and that Mason should carry out these instructions and this policy. Immediately thereafter Mason called together in a meeting all supervisors in the Shreveport exchange, including Mrs. Sibley, and at that time instructed them that the Company would be entirely neutral in the organizational contest between the employee organization and the I. B. E. W., and that they should maintain absolute neutrality in the matter and should not in any wise seek to influence any of the operators.

The respondent company operates in excess of 900 telephone exchanges in the nine Southeastern States and employs about 20,000 employees eligible for membership in labor organizations, and this incident was an inconsequential exception to the established and consistent policy of respondent and of its supervisory personnel, and is too trivial to be of any moment in this case.

(e) The conversation between Mrs. Barrows and Mrs. McCain in the presence of Mrs. Waits, testified to by Mrs. Barrows, related to the officers for which Mrs. Barrows would vote in the then

pending local association election, and was not intended by Mrs. McCain to otherwise influence Mrs. Barrows.

6. The respondent excepts to the report in connection with its findings as to the memorandum of July 20, entitled Wagner Bill Interpretations, and to the memorandum with a similar title dated in January 1937, and to the memorandum in April 1937, headed National Labor Relations Act Memorandum for Southern Bell Telephone and Telegraph Company, for the reason that the Trial Examiner failed to find in connection with these various memorandums and as bearing on the impression they would carry to the employee body, a certain material fact which is shown by the undisputed evidence, to wit: That at all of said times the Association was the only organization of employees of the respondent in existence, and hence that the employees could not have understood any of said memoranda as expressing any preference for the association as against any other organization, since there was no other organization.

7. Respondent excepts to the finding that H. S. Dumas agreed that the respondent would check off dues for the association. This is not accurate under the evidence in the case. What Mr. Dumas agreed to was that in the case of employees who signed orders directing the Company to deduct from their wages certain amounts and pay it over to the association he would honor the orders. It was also undisputed in the evidence and should have been found in this connection, that it was the established practice of the
121 Company to honor such orders or cancellation of such orders of employees for other purposes, as for example, for the payment of insurance premiums.

8. Respondent excepts to the part of the Intermediate Report dealing with the resignation of Askew, for the reason that it fails to state the reason for his resignation, as shown in the record, namely: That Askew resigned because those exercising the controlling influence in connection with the association then in process of formation, or reformation, were undertaking to form a completely independent organization of the employees and differed with Askew as to questions of policy in connection therewith.

9. In a footnote numbered 5, on page 92, the Examiner has found that the respondent was responsible for the activities in the association of Weil. This finding is wholly without support in the evidence. The evidence shows conclusively and without conflict that Weil was not a supervisory employee; that he was legally entitled to engage in activities of any kind in connection with the labor organization; that respondent would not have had the right to control him; and that in point of fact Weil was acting on his own responsibility and initiative, and without direction or guidance or influence from the respondent.

10. Respondent excepts to the report in that it failed to find certain other facts in connection with what respondent did with reference to the association immediately after July 1935, which facts were shown by undisputed evidence and should have been found, to-wit: Respondent discontinued permitting employees to transact association activities on respondent's time; it stopped paying the traveling expenses of association officers and representatives, and took all other steps which it then thought necessary to comply with the National Labor Relations Act, and promptly

122 ly informed all employees of this fact and of this policy.

11. Respondent excepts to the following statement in the report: "The significance of Warren's remarks, even assuming them to have been more informative to the employees of their rights under the act than is disclosed by the record, is small." The ground of this exception is:

(1) By implication at least the Examiner here states that Warren's remarks were not very informative to the employees of their rights, whereas in point of fact these remarks, as disclosed by the undisputed evidence and as transmitted to all employees, were fully and completely informative of the employees' rights. Indeed it is not possible for the mind to suggest any formula of words that would have carried more fully to the employees complete information on this subject.

(2) Also, the significance of these remarks is not small as found by the Examiner, but is of great and controlling importance. Respondent points out in this connection that the prompt action of Mr. Warren in disseminating to all employees full information as to their rights under the Wagner Act, and as to the complete intention of the Company to respect those rights, is shown by the undisputed evidence to have been made in perfect good faith in an earnest desire to comply fully with the law, and that the directions he then gave were completely carried out in good faith. Respondent in this connection feels justified in expressing its amazement at the way the Trial Examiner handled this instance of a sincere effort on the part of the Company promptly and completely to comply with the Wagner Act. Respondent expresses its doubt as to whether any record before this Board has ever shown on the part of a large company, such a striking instance of prompt and willing efforts to obey the act in letter and in spirit. Notwithstanding this, however, the Trial Examiner, instead of expressing any commendation of this conduct of the Company, has brushed the whole matter aside as of no importance.

123 12. Further with reference to Mr. Warren's conference, the Trial Examiner then says: "They were verbally transmitted, and since they were made but four days before the publi-

cation of the notice it must be assumed that they were brought to the attention of the employees only after the receipt by them of the written notice. The notice was, therefore, the controlling announcement of the respondent respecting the association. Far from stating the hands-off policy announced by Mr. Warren, such notice in fact announced an assumption on the part of the respondent that the association would continue to exist and function. Under all the circumstances it constituted a tacit instruction to the employees that they act to that end". Respondent excepts to these findings in the following respects:

(a) It appears positively and without contradiction, and is indeed stipulated in the record, that Mr. Warren's full remarks were personally, by responsible subordinate officials, brought to the attention of the entire employee body. Elaborate proof of this was not offered because the Board's counsel stipulated it, and the effect of this stipulation should not be frittered away.

(b) Furthermore, there is no conflict between the memorandum and Mr. Warren's remarks. The suggestion implied in the finding of the Trial Examiner that there is such a conflict is fanciful and without foundation.

(c) In stating that the memorandum announced an assumption that the association would continue the Trial Examiner goes beyond anything actually shown in the memorandum. The memorandum does assume that the association is in existence, but this of course was a fact, and was known to every employee. It carries no assumption that the employees would necessarily continue in the association, or that they would not continue in it. The Trial Examiner has here read into the memorandum something wholly foreign to its terms.

124 (d) Finally, in stating that the memorandum constituted a tacit instruction to the employees that they remain in the association, the Trial Examiner has simply made a finding without the slightest foundation in the memorandum itself.

13. Referring to the fact that before the passage of the Wagner Act respondent had permitted its employees to solicit subscriptions on respondent's time, the Examiner finds: "Moreover the respondent never removed the impact upon its employees of its assistance to the association in collecting such funds and its reasons therefor." To which the respondent excepts, because

(a) It is unable to understand what the Examiner means by the "impact" on employees. Prior to the passage of the Wagner Act it was perfectly legal for the respondent to do what it did do. If by the "impact" on employees is meant an indication on the part of respondent of a preference for the then existing association, respondent excepts to such implication for the reason that there

was no other employee organization in existence at that time, and hence no such preference could be implied from its conduct:

(b) Also, upon the ground that if any such impact had ever existed it was fully removed by Mr. Warren's remarks which were transmitted to all employees, since these remarks constituted a complete declaration of neutrality on the part of the respondent, fully communicated to all employees.

14. The Examiner has found: "The contention that a break occurred between the respondent and the Association rendering employee activity for self organization free and uninspired as of July 20, 1935, is therefore rejected by the undersigned." Respondent excepts to this finding for the following reasons:

125 (a) It totally ignores the Warren conference above referred to and the fact that the Company by communicating the Warren statement to all of its employees had completely disassociated itself from any attempt to influence in any way its employees as to what they should do about self-organization.

(b) The undisputed evidence in the case demands a finding contrary to that made.

15. The Examiner then finds: "From the facts related above it is clear that the employees correctly read and understood the notice." To which respondent excepts as follows:

(a) The statement quoted is in itself and disassociated from the context one in which the respondent would agree—that is to say—respondent agrees that those employees who read the notice understood it correctly. But the connection in which this statement is made indicates that it means something entirely different from this, namely: The Examiner is here repeating by implication his conclusion that the employees understood the notice to mean that the respondent was influencing them to join the Association. So understood the finding is excepted to as contrary to the undisputed evidence in the case.

16. Respondent excepts to the following finding of the Examiner: "The undersigned therefore finds that Weil and Wilkes, as demonstrated by their authorship of the documentary evidence described above, were motivated by a desire to continue the association unchanged, except for concessions respecting its more obvious financial support by the respondent. This was in accordance with the latter's then manifest wish." Said finding in its entirety is contrary to the undisputed evidence in the case. The proof

126 is undisputed that Weil and Mrs. Wilkes desired that the association, the organization of which they were working on at that time, should be completely independent organization representing the employee body alone. The last sentence in the above quotation is especially repugnant to the undisputed evidence, and in complete disregard thereof. The only wish that

the respondent had manifested in connection with the whole matter was the earnest wish of respondent to obey completely the Wagner Act. The finding of the Examiner of some other manifest wish by the respondent is fanciful, arbitrary, and capricious.

EVENTS OF FEBRUARY AND MARCH 1941

17. The Trial Examiner has found that on February 11, 1941, Mr. Warren instructed his staff to refrain from in any way interfering or influencing employees in their choice of representatives. Respondent excepts to this in that the finding should have gone further and found also that Mr. Warren's instructions were sent not simply to his immediate staff, but were distributed widely to all supervisory personnel. And the finding should also have included an express finding that Mr. Warren's instructions were issued in good faith, and were in fact carried out, and that the supervisory personnel in fact refrained from any such interference; all of these things being shown by the undisputed proof in the record.

18. The respondent excepts to the failure of the Trial Examiner to find that the officers of the association in February, 1941, and before the poll of the membership by the association, notified the membership and employee body generally, that the association had disassociated itself as a bargaining agency. Respondent shows in connection with this exception that what actually occurred were the following things, all of which should have been found by the Trial Examiner, and respondent excepts to his failure to find all of said things, to wit:

127 (a) Upon receiving notice that its status was questioned by the Labor Board the association, on February 10, 1941, notified Mr. Warren as President of the respondent, that until it received a new mandate from the employees it would no longer assume to act as the bargaining agency for the employees. This was in fact a disassociation of the association until and unless it received a new grant of authority from the employees.

(b) The officers of the association notified its members, and the employee body generally, that it had thus become disassociated and would not assume to act for them unless it received a new mandate. This information was fully carried to those who voted in the following referendum.

(c) Mr. Warren accepted this action of the association as terminating its authority to act until and unless it received such new mandate, recognized the association as thus disestablished and instructed all subordinates and supervisory personnel that they should no longer conduct bargaining meetings with the representatives of the association.

(d) These instructions were carried out and all supervisory personnel charged with conducting bargaining conferences refrained completely from continuing any such bargaining meetings with any representatives of the association:

(e) All such supervisory personnel completely carried out Mr. Warren's directions to remain absolutely neutral in the referendum that followed.

(f) The employee body was fully advised of all of the foregoing facts at the time the referendum was held and acted freely without any sort of pressure or influence from the management of respondent.

128 All of the foregoing having been shown by wholly undisputed evidence and stipulations should have been found by the Trial Examiner in this connection.

19. In footnote 18, on page 104, the Trial Examiner, referring to the recognition of the association as the bargaining agency for employees, says: "Such recognition had not been withdrawn by the respondent. In its February 11th letter to the association Mr. Warren merely 'noted' that pending the canvass it would not act as the bargaining agency of respondent's employees." Respondent excepts to this finding as being a complete distortion of the effect of the exchange of letters referred to and in complete disregard of the undisputed evidence as to what happened after said letters were exchanged. Respondent points out that this exchange of letters was a notice from the association that it had ceased to be the bargaining agency and an acceptance of that notice by the Company. It points out that under the undisputed evidence both sides treated it as disestablishing the association in that the association notified its members that it was no longer acting as its bargaining agency, and the President of the Company, Mr. Warren, notified the supervisory personnel to the same effect.

20. Respondent excepts to the following conclusion: "The respondent sponsored the association as an advisory agency, supported by it, for adjusting differences with employees within management limitations. It was formed, existed, and functioned only through respondent's control, financial support and sufferance." This finding is unsupported by the evidence and without substantial evidence to sustain it. Whatever elements of truth are contained in the finding as related to the time before July 1935 are exaggerated and distorted. If the finding is intended to apply at all to any condition existing after July 1935, as its language seems to imply, it is without any support whatever in the evidence in this case.

EXCEPTIONS TO CONCLUSIONS

21. Referring to the duty of respondent to disabuse the minds of its employees that they would win respondent's approval if they remained in the association, or incur its displeasure if they left it; and referring to the time immediately following the Wagner Act, the Trial Examiner has found: "Rather than so disabuse its employees the respondent tacitly instructed them to continue the association and merely withdraw its more obvious financial support." This finding, or conclusion, is excepted to as follows:

(a) It is a deliberate and utterly reckless disregard of the undisputed evidence and stipulations in this record.

(b) It is wholly without foundation in any shred or syllable of evidence presented in the record.

(c) The undisputed evidence, and indeed the stipulation of the Board's attorney, is that Mr. Warren's instructions in July 1935, to the effect that the Company would remain perfectly neutral as to what labor organizations the employees join or did not join, were completely communicated to all the employees. This evidence and stipulation are wholly and completely disregarded by this finding.

(d) By referring to tacit instructions the Trial Examiner probably refers again to his interpretation of the bulletins interpreting the Wagner Act heretofore in these exceptions referred to. As tacitly means silently, respondent is unable to understand just what this means unless the Examiner is finding that the bulletins carried an implication of something they did not say. Respondent points out that a mere reading of the language of the bulletins themselves shows how completely fanciful and unfounded is the Examiner's finding in this respect.

130 22. Referring to the fact that Weil and Wilkes continued actively in the association after the Wagner Act the Examiner has found: "Such duplication of personnel, coupled with substantial continuity of existence, is indicative of continued domination by the employer." Respondent excepts to this conclusion as wholly unauthorized by the evidence, and as an arbitrary and capricious inference not justified by the undisputed proof in this case.

23. Respondent excepts to the following finding of the Examiner: "The Association, which originated in 1919, continued after the effective date of the Act, substantially unchanged, and not only without any 'line of fracture' but without so much as a change in name." Respondent excepts to this finding for the following reasons:

In finding that there had been no line of fracture the Examiner ignored the undisputed proof in the case that after the employees had been fully advised of their rights and of the complete neutrality of the management with respect to labor organizations, a vast majority reaffirmed their membership in the association and renewed it year after year, and in February, 1941, after another declaration of complete neutrality by the management, in a referendum overwhelmingly renewed their selection of the association as their bargaining agency. Respondent insists that in the light of these repeated lines of fracture the mere failure of the employees to select a new name for the association is completely immaterial.

24. The Trial Examiner has found: "In January and April 1937, revised notices setting forth the respondent's position respecting the association were issued. Both assume that the association continued unchanged, except by the further withdrawal of financial support to it by the respondent." Respondent excepts to this finding as follows:

131 (a) No such assumption is found in the said notices.

(b) The finding completely ignores the undisputed proof that these notices were merely a part of the consistent and unvarying efforts of respondent to comply fully with the requirements of the Wagner Act, and to meet each new development in the interpretation and application of the act. The notices did assume that the association was in existence as indeed was a fact which could not be ignored by the respondent. The notices then declared in effect the intention of the respondent to comply fully with the Wagner Act in its relations with the association. This also was plain duty of the respondent. The Trial Examiner erred in drawing any adverse inference from this action on the part of the respondent.

25. The Trial Examiner had found: "In February 1941, the respondent for the first time made an unequivocal announcement to its employees of their rights under the act." Respondent excepts to this finding as follows:

(a) It is not only contrary to the undisputed evidence in the case, but is contrary to the stipulation of the Board's attorney, which at this point is wholly ignored by the Trial Examiner. The undisputed proof shows that in July 1935, immediately on the passage of the act, Mr. Warren issued instructions as to the full rights of employees under the act and as to the complete determination of respondent to respect these rights in all respects. The stipulation of the Board's counsel is to the effect that these instructions were fully communicated to the employee body of the respondent. The Trial Examiner has simply ignored this in making the above finding.

26. Further with reference to the notices of January and April 1937, the Trial Examiner has found: "Both assumed that the association continued unchanged except as affected by the further withdrawal of financial support to it by respondent." Respondent excepts to this finding for the following reasons:

(a) No such assumption is found in the language of the said notices.

(b) The only assumption made in said notices is that the association was in existence and was acting for the employees, which indeed was a fact which respondent could not ignore. The Examiner's finding also ignored the fact that there was no other employee organization in existence. It was the duty of respondent under the law to determine the details of this relation to this association; the notices did this correctly in accordance with law. Had respondent failed to do so it would have been subject to just criticism. To draw any adverse inference against respondent for its action in this respect is without the slightest justification.

27. The Trial Examiner had found: "In February 1941, the respondent for the first time made an unequivocal announcement to its employees of their rights under the act." Respondent excepts to this finding as in complete disregard of the undisputed evidence in the case to the effect that Mr. Warren, in July 1935, immediately on the passage of the Wagner Act, caused information of the employees' rights under the act and of the respondent's neutrality with respect to labor organizations, to be carried fully to the employee body; this being stipulated by the Board's attorney.

28. The Trial Examiner, referring to the 1941 notice, has found: "It once more failed, however, to disassociate itself from the association by any announcement of its discontinuance of countenance thereof." Respondent excepts to this finding as contrary to the undisputed evidence in this case. The figurative character

133 of the word "countenance" as used in this connection makes it somewhat difficult to know exactly what the Trial Examiner means. If by the expression the Examiner means that the respondent had continued support of the association down to February 1941, respondent points out that the undisputed evidence in the case shows that at least by 1937 it had withdrawn every vestige of support and had so advised its employees. If by the expression the Examiner means that in February 1941, the employees were not advised that the association was in effect disestablished as a bargaining agency, then the finding disregards (1) the undisputed evidence that the respondent accepted the declaration of the association that it was no longer acting as bargaining agent; (2) advised all of its supervisory personnel that they could no longer

bargain with representatives of the association; (3) the supervisory personnel carried out these directions; and (4) the association officers advised the membership of the association that it could no longer act as bargaining agent; all of which is undisputed in the proof and totally ignored by the Trial Examiner in making this finding.

29. The Trial Examiner has found: "The effect of the domination and support of the association by the respondent prior to and during the years since 1935, could not under the circumstances, be dissipated except by an explicit announcement to the employees that the respondent would no longer recognize or deal with it. In the absence of such action by the respondent, its employees were not afforded the opportunity to start afresh in organizing for the adjustment of their relations with the employer which they must have if the policies of the act are to be effectuated." The respondent excepts to this finding as wholly unauthorized by the undisputed evidence in the case. In connection with this exception the respondent points out:

(a) The finding that respondent had continued domination and support of the association during all the years
134 prior to 1941 is in complete disregard of the undisputed evidence in the record to the contrary.

(b) The implied finding that the employees in February 1941, were not advised that the respondent was no longer recognizing the association as its bargaining agency, is contrary to the undisputed evidence in the case that the employees were so advised.

(c) The finding that in February 1941, the employees were not afforded a complete new opportunity to express their wishes with regard to their own labor organization free of any interference on the part of the respondent, is contrary to the undisputed evidence in the case; is fanciful, arbitrary and capricious.

(d) The finding impliedly recognizes in principle that if the employees were in February 1941, given a free opportunity to express this choice, their subsequent referendum vote would be binding on the board, but in applying the principle the Examiner disregards the undisputed proof in the case and reaches a result directly the reverse of that which the principle as stated by him would require when applied to the facts shown by undisputed proof.

30. Respondent excepts to the failure of the Trial Examiner to find that respondent had for several years bargained at arm's length with the association representing the employees as their bargaining agency; that during all that time respondent had not dominated or interfered in any way with the association in its affairs; and that in the course of such bargaining respondent made

many and valuable concessions to the employees. The details of this are shown in exhibits filed in this case, which disclose the minutes of the various bargaining conferences. The details are too numerous to be repeated in these exceptions. All of this proof was ignored by the Examiner as of no moment.

135 31. Respondent excepts to the conclusion of the Examiner that it had dominated and interfered with the formation and administration of the association and had interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the act, as contrary to the undisputed evidence in the case, unauthorized by the proof, arbitrary and capricious.

OTHER ALLEGED INTERFERENCE, COERCION AND RESTRAINT

32. In his findings with reference to the incidents at the Shreveport plant the Examiner deals with the Sibley incident and the Bostick incident. Respondent excepts to the failure of the Examiner to find that there are in excess of 900 exchanges operated by this respondent, and about 20,000 employees employed by it, and that the entire proof of any alleged interference by supervisory officials, if accepted at its face value, amounts to only two occurrences in one exchange, affecting four employees. The incidents referred to, in comparison with respondent's entire organization, are so trivial as to be utterly frivolous. The fact that the Examiner treats them as important and orders notices posted in every exchange operated by respondent on account of them, indicates a completely distorted point of view toward the case as a whole. The Examiner should have found that the completely frivolous character of this attack indicates how completely respondent has complied with the Wagner Act and required its supervisory personnel to comply with the same. The Examiner should have found that the proof on this branch of the case completely vindicated the respondent, and should have made a report commending respondent for its successful efforts to comply with the law. Respondent excepts to the failure of the Examiner to make these findings.

136 33. Referring to the Sibley incident the Examiner should have found, because it is shown by undisputed evidence, that just after Mason made the remarks to Mrs. Sibley which are quoted he was instructed by his superior that he must maintain an attitude of absolute neutrality toward what labor organizations the employees might join, and Mason thereupon called in Mrs. Sibley and the other supervisors at the Shreveport exchange and instructed them that they must be absolutely neutral with respect to labor organizations, and that these instructions

were from then on completely carried out. Respondent excepts to the fact that the Examiner ignored this proof, which indeed came from the Board's witnesses, and that by omitting these facts he presents a completely distorted, biased and unfair report of the whole Sibley incident.

34. Respondent excepts to the Examiner's report of the Bostick incident, in that the Examiner construes Miss Bostick's remarks in a manner that is contrary to the undisputed testimony in the case. Further upon the ground that the whole incident is so trivial as to be utterly immaterial, whereas the Examiner makes it a matter of great importance in his report.

35. Respondent excepts to the finding of the Examiner that it (the respondent) by the statements and acts of Mason and McCain above referred to, has interfered with, coerced, and restrained its employees in the exercise of rights granted in Section 7 of the Act. Respondent has heretofore pointed out why such a finding is contrary to the undisputed evidence, arbitrary and capricious, and does not repeat the details in this exception.

EXAMINER'S FINDINGS AS TO THE EFFECT OF THE ALLEGED UNFAIR LABOR PRACTICE UPON COMMERCE

36. Response excepts to the finding of the Examiner that the activities of the respondent would tend to lead to labor disputes burdening and obstructing commerce, as contrary to the undisputed evidence in the case, arbitrary and capricious. Respondent points out that any fair and impartial mind looking at the record in this case, is compelled to the conclusion that respondent has not interfered with the rights of its employees, and that the overwhelming majority of respondent's employees wished to be represented by their present association. The record in this case is so conclusive on this that it requires an extremely distorted point of view to even contemplate the contrary. Hence, instead of respondent's acts tending to create labor disputes, it is on the contrary absolutely certain that if the Trial Examiner's report is made the order of the Board and enforced by the Courts, it will have the certain and inevitable effect of creating labor disputes, burdening and obstructing the free flow of commerce, all contrary to the purposes of the Wagner Act. It would have the further tendency of disrupting of communication service in that area of the United States where a large volume of defense activities are being conducted, all of which are vitally dependent on this communication service. These results will be inevitable because the effect of such action would be to destroy the labor organization which represents the choice of the overwhelming majority of respondent's employees.

THE REMEDY SELECTED BY THE EXAMINER, THE CONCLUSIONS OF LAW EXCEPT NO. 1, AND THE RECOMMENDATIONS OF THE EXAMINER

37. All of the matters covered by the Examiner by this heading rest upon the erroneous conclusions of fact to which exception has heretofore been taken. All of the findings under these heads made by the Examiner are excepted to as unauthorized by the evidence in the case and contrary to the undisputed evidence and the stipulations in the case, the details having been heretofore set out separately, are not here repeated.

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CONCLUSION

For the exceptions and upon the record in this case, respondent respectfully moves the Board to dismiss the complaint herein as amended.

Respectfully submitted,

**SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY,**

Respondent

By (Sgd.) **MARION SMITH,**
Marion Smith,

Its Attorney.

(Sgd.) **E. W. SMITH,**
E. W. Smith,

(Sgd.) **JOHN A. BOYKIN, Jr.,**
John A. Boykin, Jr.,

Of Counsel.

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Before the National Labor Relations Board

Case No. C-1911 (KV-C-617)

In the Matter of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFFILIATED WITH A. F. L.

Exceptions of Southern Association of Bell Telephone employees to the intermediate report of the trial examiner

July 14, 1941

The Southern Association of Bell Telephone Employees, referred to in this proceeding as the Association, comes now, within twenty (20) days from the date of the entry of the order trans-

ferring the case to the Board, and files the following statement in writing, setting forth exceptions to the intermediate report of the Trial Examiner.

1

The report of the Trial Examiner is not a fair and impartial one and is not in accordance with the evidence and stipulations. The report, when considered in the light of the record, shows a bias and prejudice against the Association and in favor of the Union.

The Trial Examiner, in summarizing the pleadings, has done so in a manner which is not only unfair to the Association but which was obviously intended to minimize and belittle the important and controlling facts set forth in the pleadings of 144 the Association and established by the evidence and by stipulations. In this connection, the Association calls attention to the fact that the Trial Examiner has fully summarized the allegations of the complaint, setting forth in detail the various allegations of unfair labor practices alleged to have been indulged in by the respondent and tending to show that the Association was supported and dominated by the Respondent. As to the pleadings filed by the Association, the Trial Examiner made only passing reference in two comparatively short sentences, wherein he states that the Association "filed its answer by which it asserted that it was free of domination by the Respondent. On March 21st, 1941, the Association filed an amendment to its answer expanding certain information contained therein." Nowhere in the intermediate report does the Trial Examiner give any further indication as to the contents of the answer or the amendment thereto or as to "the information contained therein" which he says was expanded.

As a matter of fact, the answer of the Association not only denied that the Association was "dominated by the Respondent", but, in addition to answering each and every allegation of the complaint so far as they related to the Association it affirmatively set up the following important and controlling facts:

(a) That although prior to the passage of the National Labor Relations Act the Association had been supported financially by the Respondent, the Association, in anticipation of the enactment of the Act, had raised funds by voluntary contributions made by the employees of the Respondent so as to be prepared to meet its own financial obligations.

(b) That after the passage of the Act various employees of Respondent adopted a new constitution for the Association, 145 which was ratified and became effective February 1st, 1936;

and that, thereafter, the Association refunded to the employees who had contributed to the temporary fund referred to above the amount so contributed by each such employee.

(c) That the Association, as it existed at the time of the hearing, consisted of approximately 17,400 employees of the Respondent, this being much more than a majority of the entire number of employees of Respondent, and was, and for a number of years had been, wholly free from any support, financial assistance, domination of or interference by the Respondent.

(d) That on February 10th, 1941, prior to the filing of the complaint the Association, having learned that the Union was making an effort to organize certain of the employees of the Respondent and was claiming that the Association was not a legal, valid and independent labor organization, notified the Respondent that pending a vote, which was to be taken to ascertain the fair, unbiased and uninfluenced expression of the wishes of the membership, it would cease to act as the bargaining agency of the employees of the Respondent; that it fully advised its members of the above fact and of their rights under the Act; that, after having so advised the members, a ballot was sent to each member to be marked by the members and returned by United States mail to a firm of certified public accountants to be counted and the results certified; that the ballot so prepared contained the two following questions, to be answered by each member:

"Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?"

"Answer:

"Yes.

"No.

146 "Do you desire to continue your membership in Southern Association of Bell Telephone Employees?"

"Answer:

"Yes.

"No."

The report of the firm of certified public accountants, made under oath, showed that on March 5th, 1941, 15,356 members had voted "yes" to both of the foregoing questions. By the amendment to the answer, filed on March 21st, 1941, referred to by the Trial Examiner, it is shown that as of March 16th, 1941, 15,713 of the employees of the Respondent had voted "yes" to both of the foregoing questions.

It appears from the answer of the Respondent, filed on February 26th, 1941, that prior to these ballots having been sent out and prior to the vote of the employees, above referred to, the Respondent had issued, and caused to be posted on its bulletin boards

throughout its system, a notice to all employees advising them of their rights under the Act, and that, "the Company recognized its employees' right to join, form or affiliate with any labor organization of their own choice and freely to exercise all rights secured by this Act." The notice guaranteed the Respondent's strict compliance with the Act and that no employee would be discriminated against because of his or her exercise of any right secured by the Act.

The Association says that inasmuch as the Trial Examiner purported to summarize the pleadings, and did summarize fully the allegations of the complaint against the Respondent and the Association, the manner in which he referred to the pleadings of the Association was unfair and manifested a disposition on his part to minimize and belittle the important affirmative facts, above referred to, contained in the defensive pleadings.

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In dealing with the subject-matter of the vote by the members of the Association taken in February 1941, the Trial Examiner (although finding that 15,713 members of the Association had voted affirmatively to both questions contained on the ballot and that this was done after the Association had notified the Respondent that it had voluntarily withdrawn from any bargaining relations with the Respondent and after the Respondent had caused to be posted on its bulletin boards at 2,173 places the bulletin, above referred to, advising the employees of their rights under the Act and of Respondent's complete neutrality) held that the result of this expression of the employees evidenced by the affirmative vote of the 15,713 such employees is to be disregarded because, as he says in a footnote on page 13, the Respondent had not withdrawn recognition of the Association, that "in his February 11th letter to the Association, Warren merely 'noted' that pending the canvass, it would not act as bargaining agent of the Respondent's employees."

The Association excepts to the above finding of the Trial Examiner as being contrary to the evidence, arbitrary and capricious. The undisputed evidence shows the following to be the facts with respect to said matter, and the Trial Examiner should have so found; and the Association excepts on the ground that he did not so find!

Before the complaint was filed the Association, acting through its executive board and under the authority of its general assembly, notified Respondent in writing on February 10th, 1941, to the effect that the Association had learned that a complaint would probably be filed seeking a disestablishment order requiring Re-

spondent to cease and desist recognizing the Association as the legal collective bargaining agency of the employees on the
148 alleged ground that the Association was dominated by the

Respondent; that the attorneys and officers of the Association had made a thorough investigation of the affairs of the Association and unqualifiedly asserted that such a charge is utterly untrue but that "because such a charge clouds this Association's right to represent the employees of the Company and that under such circumstances the best interests of the employees may not adequately be served, the Association will not undertake to act as their collective bargaining agency pending a canvassing of its membership by a signed ballot." The Respondent, in writing on February 11th, 1941, acknowledged receipt of the notice of the Association and noted that "pending a canvass of your members, you will not undertake to represent the employees of this Company as their collective bargaining agent." On the same day, February 11th, 1941, the Respondent, in writing, notified all of its general officers, State heads, district heads, general and staff heads of the receipt by it of the notice of February 10th, enclosing a copy of said notice and of the Respondent's reply of February 11th, and advising them: "You will note that, pending the canvass of its members, your Association will not undertake to act as the collective bargaining agent of the employees of this Company." It directed them to immediately instruct all supervisory personnel of the Respondent to in no wise interfere with any activity of the employees, or of any labor organization or union, or in any way advise such employees with reference to any labor organization's activities, or attempt to influence any employee to join or not to join a labor organization, that "All employees have an unqualified right, under the National Labor Relations Act, to exercise their free and uninfluenced choice in such matters. It directed that the bulletin, above referred to, be posted. In the meantime, the Association had sent out bulletins advising that the Association was preparing to take a poll of its members and that "in order that there might be no semblance

149 of compulsion, it was thought best that pending the vote of its members the Association should for the time being cease even to act as the bargaining agent of the members and wait until at least fifty-one per cent of the eligible employees should again express their wishes and desires to the effect that the Association should act as the bargaining agent." In a letter of February 12th to all members of the Association, it is stated: "We again remind you of the provisions of the Wagner Act, and desire that your wishes be clearly expressed with full knowledge on your part that the law does not permit an employer to favor

or support any particular organization, or type of organization, as representative of the employees, over any other particular organization or type of organization." In a letter of February 18th accompanying the ballot to all members of the Association, it is stated: "Until the authority of this Association is confirmed by the members by this ballot, the Association will not act as the bargaining agent."

On February 28th, after more than 15,000 employees had voted affirmatively in favor of the retention of their membership in the Association and that the Association act as the bargaining agent of the employees, the Association called upon the respondent to recognize the Association as the bargaining agent of the employees.

Respondent, on March 3rd, replied, calling for certain specific information, including a copy of the ballot used in voting by the employees, copies of the letters to the employees accompanying or relating to such ballot, the affidavit of a member of the firm of certified public accountants stating the manner in which the ballots were received, tabulated, counted and checked, together with the results of such ballots. On March 5th, the information called for by the Respondent was furnished it.

The finding of the Trial Examiner to the effect that the 150 expression of the employees of their choice of the Association as their bargaining agency was ineffectual because the Respondent had not withdrawn recognition of it but had merely "noted" that the Association had withdrawn its right to act as bargaining agent of the employees is not only highly technical but it is directly contrary to the evidence.¹

The effect of the Trial Examiner's finding, excepted to in this exception, would be to deprive the employees of the rights guaranteed to them by the Act because of some technical misuse, or nonuse, of language on the part of the employer in merely "noting" that the bargaining relation between the Association and the Respondent had been terminated instead of affirmatively asserting that to be the case. The Association, as representative of the employees, had taken positive, affirmative and definite action to terminate all bargaining relations so as to put the employees in position to exercise their rights under the Act of selecting a representative of their own choosing. The employees, according to the Trial Examiner, are to be deprived of these rights because of some careless use of language by the employer.

¹ Mrs. Hazel Bostick, of Shreveport, Louisiana, a member of the Union, a witness for the Board, testified that she understood from the correspondence that "the Association was temporarily dissolved;" and Mason, the Respondent's manager at Shreveport, understood it as instructions "to desist recognizing the Association as the legal collective bargaining agency of the employees of the Company." (Tr. 371, 376.)

The Association excepts to the finding of the Trial Examiner (footnote 3 on page 89 to the effect that Askew occupied a supervisory position and that "He thereby occupied a strategic position to translate to the employees the desires of the Respondent" and that the Respondent was "responsible of the activities of Askew in conducting the canvass for contributions and in initiating the movement for a 'new' Association," because:

151 (a) The finding to the effect that Askew occupied a supervisory position is contrary to the evidence and without evidence to support it, the evidence being to the effect that during the period in question, when the contributions were being solicited prior to the passage of the Act and when the new constitution (which became effective February 1st, 1936) was being formulated for submission to the employees, Askew had no supervisory power, had no one working under his orders and had no authority to hire or fire or give orders to any employee.

(b) The finding to the effect that the Respondent was responsible for the activities of Askew "in conducting the canvass for contributions and in initiating the movement for a 'new' Association" is contrary to the evidence and without evidence to support it.

(c) The Trial Examiner has failed and neglected to state a fact or make a finding in this connection which is relevant and material and which is shown by the undisputed evidence, viz: that Askew resigned as President of the Association in August 1935, because the other officers and members of the Association disagreed with him and his views as to the propriety of retaining the old constitution and the old organization instead of adopting a new constitution, Askew being of the opinion, and advocating, that the old constitution and the old organization should be retained with certain minor changes relating to finances, and the others being of a contrary opinion; that Askew was not allowed, or permitted to name the members of the special committee which met for the purpose of outlining and preparing a proposed new constitution to be submitted to the employees; that he was refused permission to participate in the deliberations of that committee; that he resigned as president and ceased to have any official connection with the Association at the convening of the general assembly
152 on August 30th, 1935, and never thereafter had any official connection with the Association.

The Association excepts to the finding of the Trial Examiner (page 90) relating to the meeting of July 10th, 1935, called by

Warren for the purpose of discussing the Act and giving instructions concerning it. The Trial Examiner, after stating that Warren at this meeting of supervisory employees of the Respondent read §§ 7 and 8 of the Act and stressed the employees' right of self-organization and announced that the Respondent would follow a hands-off policy, states: "The substance of these remarks were thereafter transmitted by word of mouth to their subordinates by the Respondent's more than one hundred twenty higher officials." The exception to this is that the Trial Examiner has failed to find and report the fact, which is established by the undisputed evidence and by stipulation, that this information was communicated to the employee body of the Respondent. The stipulation (Tr. 575-6) is to the effect that "The substance of Mr. Warren's statement as to the Wagner Act, and as to the policy of the Company with respect to that Act as shown in Mr. Warren's testimony in this record, was by such division and district officers communicated to their subordinates and to the general body of employees of the Company."

5

The Association excepts to the finding of the Trial Examiner (footnote 5, page 92) to the effect that Weil occupied a supervisory position and that the Respondent was responsible for his activities in the Association. Said finding is contrary to the evidence and without evidence to support it, the undisputed evidence being that

Weil did not, during the time referred to (while he was 153 president of the Association) occupy any supervisory position or have any supervisory powers, that he had no one working under him, had no power to hire or fire or to give orders, or otherwise exercise supervisory powers.

6

The finding of the Trial Examiner (page 91) with reference to the remarks made by Dumas before the general assembly in August 1935, is excepted to on the ground that the same is an unfair statement of the facts with respect to this matter and is calculated to convey a wholly erroneous impression concerning the same. The remarks attributed to Dumas in this report of the Trial Examiner consist of only a few disconnected phrases called by the Examiner from those remarks, as shown by the undisputed evidence; and these phrases called from the remarks by no means convey any correct idea of the substance and purport of the talk made by Dumas to the general assembly. For example, in opening his talk on that occasion, Dumas said: "That both he and Mr. Warren felt very keenly the importance of this meeting, that

it was history in the making for the employees and the Company. That it seemed almost like the signing of the Declaration of Independence." He stated "That the management, for the good of all concerned, would, insist on meeting the provisions of the law to the letter."

7

The Trial Examiner has found (page 92), referring to the meeting of the general assembly in August 1935, "The revised constitution and joint agreement were approved and it was resolved that weekly dues of five cents for women and ten cents for men be collected from the membership." This finding is excepted to upon the ground that the statement to the effect that the
154 general assembly itself adopted a resolution for the collection of weekly dues is incorrect, the evidence being that the resolution in question was referred by the general assembly to the various locals for action by the individual members, and that the resolution was not to become effective until ratified by the employees through a majority of all of the locals. And, in this connection, the Trial Examiner should have found, but neglected to find and report, that the matter of handling, using and disbursing the funds to be raised by the weekly dues was to be provided for by rules to be formulated by a special committee of employees to act until the ratification of the proposed constitution. In other words, the dues that were to be collected if and when the resolution providing therefor was ratified, were not to be handled through the old Association but through a special committee of employees until a new constitution should be adopted.

8

The Association excepts to the finding of the Trial Examiner to the effect that the adoption by the employees of the constitution effective February 1st, 1936, and their ratification and approval of the joint agreement effective as of said date did not substantially change the relation between the Association and the Respondent from that existing between the old Association and the Respondent before the passage of the Act. This finding of the Trial Examiner is contrary to the evidence and is the result of highly technical application by him of various excerpts culled from documents, such as letters, etc., written by the representatives of the employees in connection with the formulation and submission of the new constitution and joint agreement. The Trial Examiner has wholly ignored the true meaning and import of these documents when read as a whole. For example (page 93), he culls from a

letter of Weil of September 3rd the phrases "our Association," "revised constitution" and "our employee body." The document from which these are culled, when read as a whole, can convey no other idea than that the writer thereof considered the proposed constitution as one formulating a new plan of representation of the employees in their relations with the management. In it the writer speaks of the "whole plan of the proposed constitution." He also says: "The Committee earnestly endeavored to take into consideration the recommendations submitted by you and I sincerely believe that you will feel as this Assembly has felt—that, while the plan is not perfect, it is a base on which to work and that you will back your leaders and our Association until it is perfected." In the same connection, the Trial Examiner has culled from Weil's letter of September 11th, 1935, certain disconnected phrases such as "your Association is on trial." The letter referred to (Board's Exhibit 12) also, when read as a whole, makes it clear that the writer was trying to, and did, convey the idea that the plan and purpose was to reorganize the Association under an entirely new constitution. For example, he states: "The proposed plan calls for a General Executive Board, composed of 7 members. * * * This Board will be the supreme power and included in its authorities will be the setting up in conjunction with what will be known as the State Finance Committee a budget of the expenditures of each Division." He also states: "Our proposed plan, similar to our present set-up but taking in as many economies as we felt could be justified at this time and developing, through the General Executive Board, a much stronger organization, is thoroughly known by your Division Chairmen."

On page 96 the Trial Examiner says: "The undersigned therefore finds that Weil and Wilkes, as demonstrated by their authorship of the documentary evidence described above, were motivated by a desire to continue the Association unchanged except for concessions respecting its more obvious financial support by the respondent." The evidence, when considered with any sort of degree of fairness and impartiality, wholly fails to support any such statement of finding. On the contrary, the evidence, if fairly considered, demonstrates that the purposes and desire of those participating in the reorganization, including Weil and Wilkes, were to formulate and organize an association to act as the bargaining representative of the employees which, in all respects truly and in good faith, would comply with the letter and spirit of the Act. It is true that the employees and their representatives participating in this matter had, and did not attempt to conceal, the desire and purpose of having their own organization—

one of their own creation—to act as their bargaining representative instead of having, as such bargaining representative, an outside labor union. There was no effort on their part to conceal this. The Trial Examiner, apparently in his desire to condemn the Association, has ignored all evidence except such as he thought would tend to support his highly technical and capricious finding and conclusion condemning the Association, and has arbitrarily ignored that fact that the employees have, in no uncertain terms, selected it as their representative of their own choosing.

9

The Trial Examiner (page 95) says: "Association mimeographing was performed by the respondent but was paid for monthly by the Association beginning August, 1935. This arrangement continued until February, 1938, at which time the Association bought its own mimeograph machine." This finding is excepted to. It, as stated, is not correct and is not supported by any evidence but is contrary to the evidence. The undisputed evidence is that while mimeographing for the Association during the time in question was done on the Respondent's machine, it was ~~not~~ "performed by the Respondent" but it was done by members of the Association not on Company time or while they were on duty for the Respondent, and the time consumed by the operators in operating the machine was paid by for the Association and the stationery and supplies used in such mimeographing for the Association was paid for by it.²

10

The Trial Examiner (page 96), referring to the fund raised by voluntary contribution by employees upon solicitation prior to the passage of the Act, says: "The respondent was never refunded for its expenses in this connection. Moreover, the respondent never removed the impact upon its employees of its assistance to the Association in collecting such funds and its reasons therefor". This finding of the Trial Examiner is excepted to:

(a) Because it appears from the undisputed evidence that any expenses incurred by the Respondent in this connection were incurred prior to the passage of the Act when, under its then arrangement with the Association, it was a perfectly proper and legitimate thing to do. The Trial Examiner should have so found and stated.

² The Association produced at the trial bills and canceled checks showing that all mimeographing done on the Company's machine was paid for by it, and it was stipulated that such bills and checks were on hand ready to be offered in evidence (Tr. 613). A like stipulation was made as to the payment by the Association for the time of the operators operating the machine (Tr. 736-7).

(b) As to the second sentence above quoted, the same is vague and the term "impact upon its employees," as here used, is indefinite and ambiguous to say the least of it. If it was intended by the Trial Examiner to imply that the employees who participated in forming, and became members of, the Association, as reorganized, were under any intimidation, compulsion or influence on the part of the Respondent causing them to become, or remain, members of the Association or preventing them from the free exercise of their rights under the Act in choosing the Association as their bargaining agent, then such finding is contrary to the evidence and without evidence to support it.

11

The Association excepts to the finding of the Trial Examiner (page 98) to the effect that no break occurred between the Respondent and the Association rendering employee activity for self-organization free and uninspired as of July 20th, 1935. Said finding is contrary to the evidence and is without evidence to support it.

12

The finding of the Trial Examiner (page 105) to the effect as follows: "Rather than so disabusing its employees, the respondent tacitly instructed them to continue the Association and merely withdrew its more obvious financial support" is excepted to on the ground that the same is contrary to the evidence and without evidence to support it.

13

The Association excepts to the finding of the Trial Examiner (page 106) that the Respondent, in February 1941, although unequivocally announcing to its employees their rights under the Act, once more failed, however, "to disassociate itself from the Association by any announcement of its discontinuance of countenance thereof. The effect of the domination and support of the Association by the respondent prior to and during the years since 1935, could not under the circumstances, be dissipated except by an explicit announcement to the employees that the respondent would no longer recognize or deal with it. In the absence of such action by the respondent, its employees were not afforded the opportunity to start afresh in organizing for the adjustment of their relations with the employer which they must have if the policies of the Act are to be effectuated." This finding of the Trial Examiner is contrary to the evidence and is based by him

upon his highly technical interpretation of the evidence and of excerpts culled by him from correspondence and documents separated from, and construed without consideration of, their context. The finding to the effect that the employees in the voting of February 1941, were under any domination, influence, compulsion or intimidation exercised by the Respondent is wholly at variance with the undisputed evidence in the case. To a person of ordinary intelligence, it would be impossible to think of more effectual means of impressing upon the employees the fact that they were free to exercise their rights of choosing their own representative for bargaining purposes than those which were adopted and which the evidence, and, indeed, the stipulations, established beyond any possibility of dispute. In the last analysis, the Trial Examiner has endeavored to nullify this action on the part of the employees by seizing upon the fact that Warren, president of the Respondent, merely "noted" that all bargaining relations had been terminated pending the vote instead of affirmatively stating this to be true. The implication in said finding to the effect that the Association and its members had been under "domination" of the Respondent up to that time is without any support in the evidence.

14

The finding of the Trial Examiner (page 107) to the effect that the Association had been dominated and interfered with, restrained and coerced in the exercise of the rights guaranteed in § 7 of the Act is excepted to as being contrary to the evidence and without evidence to support it.

160

15

The conclusion of the Trial Examiner that the Association was sponsored and supported by the Respondent, and that it was formed, existed, and functioned only through the Respondent's control, financial support, and sufferance, is excepted to as being contrary to the evidence and without evidence to support it.

16

The Association excepts to the recommendation of the Trial Examiner to the effect that the Respondent be required to cease and desist recognizing the Association as the bargaining representative of the employees, and that the Association be disestablished as such representative, upon the ground that such action on the part of the Board would be wholly unjustified and would, in effect, be a deprivation by it of the rights of the employees to

be represented by a representative of their own choosing as their bargaining agent, and an effort to compel them to become affiliated with another organization, contrary to their wishes and desires.

17

The recommendation of the Trial Examiner, to the effect that the Respondent be required to cease and desist giving effect to, or performing any contract with, the Association is excepted to for the same reason assigned in the last foregoing exception above.

Wherefore, the Association prays that an order be entered by the Board denying the prayers of the complaint insofar as the same in any wise relate to the Association.

SOUTHERN ASSOCIATION OF BELL
TELEPHONE EMPLOYEES,

By _____
By JAMES A. BRANCH,

Its Attorneys.

164 Before the National Labor Relations Board

Case No. C-1911

In the Matter of SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFFILIATED WITH A. F. L.

Decision and order

National Labor Relations Board, Sept. 22, 1941, Docketed S.

Mr. Warren Woods, for the Board.

Mr. Marion Smith, Mr. E. W. Smith, and Mr. John A. Boykin, Jr., of Atlanta, Ga., for the Respondent.

165 Mr. O. A. Walker and Mr. E. H. Williams, of Shreveport, La., Mr. G. X. Barker, of Birmingham, Ala., and Mr. George L. Gooze, of Atlanta, Ga., for the Union.

Mr. Frank A. Hooper, Jr., Mr. Samuel A. Miller, Mr. James A. Branch, and Mr. Thomas B. Branch, Jr., of Atlanta, Ga., for the Association.

Mary M. Persinger, of Counsel to the Board.

Statement of the case

Upon charges and amended charges duly filed by International Brotherhood of Electrical Workers, affiliated with the American

Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fifteenth Region (New Orleans, Louisiana), issued its complaint dated February 17, 1941, against Southern Bell Telephone and Telegraph Company, Atlanta, Georgia, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, 166 herein called the Act. Copies of the complaint, together with notice of hearing thereon, were duly served upon the respondent, the Union, and Southern Association of Bell Telephone Employees, herein called the Association.

Respecting the unfair labor practices, the complaint alleged in substance that the respondent: (1) on or about October 1, 1919, formed the Association and thereafter, to the date of the complaint, dominated and interfered with its administration and contributed financial and other support thereto by paying its expenses to July 5, 1935; on that date notified its employees that it could not thereafter defray the expenses of the Association and suggested that they continue it as their bargaining agent and make arrangements for its independent financing; about May 20, 1935, paid the expenses of the Association in canvassing its members for the collection of funds, such funds continuing to be received after the effective date of the Act; from August 1, 1935, to February 1, 1936, paid the expenses of Association representatives meeting in Atlanta to revise the structure and joint agreement of the Association; and advised them concerning such matters; from August 1, 1935, to July, 1937, permitted the free use of its facilities and property by the Association for the conduct of business and solicitation of membership, and after June 25, 1937, charged only a nominal rental for such privileges; permitted its agents to discourage membership in the Union so as to encourage membership in the Association; and failed to notify its employees at any time of its discontinuing its support of the Association and of their rights under the Act; (2) entered into contracts with the Association, those executed in 1940 being in effect when the complaint was issued, and (3) interfered with, restrained, and coerced its employees by permitting its managers at Shreveport, Louisiana, and other places to make statements antagonistic to labor organizations other than the Association; during November and December, 1940, and January 1941, at

¹ Incorrectly designated in the formal papers as "Southern Bell Telephone & Telegraph Co. (incorporated)" and corrected at the hearing, pursuant to motion by counsel for the Board.

167 attempted to influence its employees in their choice of a labor organization by threats and inducements; and during November and December 1940, caused a rumor to circulate at its Shreveport, Louisiana, plant that employees who joined the Union would be demoted or discharged, and advised its employees that the Union would do them no good and might do them harm.

The respondent filed its answer dated February 26, 1941, denying the commission of any unfair labor practices.

On March 11, 1941, an amended complaint was issued in which the allegations respecting statements antagonistic to labor organizations, by managers of the respondent, were limited to Shreveport, Louisiana. The respondent filed its answer to the amended complaint, dated March 15, 1941.

Pursuant to notice, a hearing was held March 17 through 21, 1941, in Atlanta, Georgia, before Josef L. Hektoen, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Association were represented by counsel and the Union by its representatives; all participated in the hearing. Full opportunity to be heard, to examine and cross examine witnesses, and to introduce evidence bearing on the issues, was afforded all parties.

At the opening of the hearing the Association was granted leave to intervene; it thereupon filed its answer by which it asserted that it was free of domination by the respondent. On March 21, 1941, the Association filed an amendment to its answer expanding certain information contained therein. At the close of the hearing counsel for the Board moved to conform the complaint to the evidence; the motion was granted without objection.

168 During the course of the hearing, the Trial Examiner made rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. After the hearing, the respondent and the Association filed briefs with the Trial Examiner.

On June 16, 1941, the Trial Examiner issued his intermediate Report, copies of which were duly served upon all the parties. He found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act, and recommended that the respondent cease and desist from such unfair labor practices and take certain affirmative action in order to effectuate the policies of the Act.

Thereafter, the respondent and the Association duly files exceptions to the Intermediate Report. Pursuant to notice, a hearing

for the purpose of oral argument was held on August 5, 1941, before the Board, at Washington, D. C. All parties were represented by counsel and participated in the hearing. Briefs were duly filed with the Board by the respondent and the Association. The Board has considered the exceptions and briefs filed by the respondent and the Association and, to the extent that the exceptions are inconsistent with the findings of fact, conclusions of law, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

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Findings of fact

I. THE BUSINESS OF THE RESPONDENT

The respondent, Southern Bell Telephone and Telegraph Company, is a New York corporation, having its principal office in Atlanta, Georgia. It is one of 24 associated companies of the American Telephone and Telegraph Company which owns all of its issued stock. The respondent conducts a general telephone business in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. It furnishes both local and long distance telephonic communications and its lines connect with those of: (1) the American Telephone and Telegraph Company and associated companies; (2) 837 other telephone companies in the State served by it; and (3) foreign systems throughout the world by wire, cable, and radio. It serves numerous units of the armed forces of the United States, many defense industries, and approximately 140 broadcasting stations within its territory. It also furnishes ship-to-shore communication.

As of March 1, 1941, the respondent served approximately 1,375,000 subscribers, employed approximately 23,000 persons, and its physical properties and equipment represented an investment of approximately \$315,000,000. During 1940, it purchased equipment and materials valued at "many millions of dollars," the greater part thereof from outside the territory served by it. During 1940, its gross revenues exceeded \$75,000,000, "several millions of dollars" thereof representing revenues from interstate commerce.

The respondent admits that it is engaged in commerce, within the meaning of the Act.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Electrical Workers is a labor organization affiliated with the American Federation of Labor. It admits to membership employees of the respondent.

170 Southern Association of Bell Telephone Employees is an unaffiliated labor organization. It admits to membership only employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Interference with, domination of, and support given to the Association*

1. Organization of the Association

The Association was established in 1919 under the sponsorship of the respondent. Its purpose was provision of "facilities for the exchange of views and suggestions, for negotiations, either individually or collectively, between the employees and the Management. * * * "Joint agreements" were entered into between the Association and the respondent respecting procedure for conferences between their representatives.

Applications for membership, though provided for in the Association constitution, were not uniformly required; no overall membership list was maintained; the Association had no office and transacted its business on the respondent's premises; no dues for expenses were collected; and membership was restricted to white employees and those below supervisory grade. The respondent did not directly participate in the internal affairs of the Association and had no voice in naming its officers and committees, but defrayed all expenses of the Association and paid the salaries and expenses of employees engaged in Association business.

The respondent admits that it sponsored the Association and contributed financial and other support to it at all times from its creation to the effective date of the Act, July 5, 1935.

2. The Events of April 1935 to February 1, 1936: Changes in the Association

During April and May 1935, when passage of the Act was considered imminent, the Association solicited a 50 cent contribution from each member. The respondent paid the salaries and expenses of the solicitors and extended them the use of its facilities, including automobiles. For example, Lloyd H. Weil, vice-president of the Association, canvassed Louisiana and Mississippi and held meetings of the respondent's employees on its premises and time. He informed such meetings that: (1) passage of the Act would "outlaw" the Association; (2) it was the "consensus" of "quite a few of the officers of the Association" that the employees of the respondent should be represented by their

own organization; and (3) to that end funds were vital. At least one local official of the respondent directly aided the canvass. A. F. Bear, district traffic manager at Shreveport, Louisiana, addressed the meeting conducted there and said that the respondent had supported the Association since 1919, and that the employees should now do so because the respondent would be unable to interfere in the event that outside organizations attempted to organize them.

The contributions to the Association amounted to about \$5,000. This sum was turned over to Jane H. Wilkes, general secretary of the Association, and for this purpose acting treasurer by appointment of Howard M. Askew, Association president since 1933, and an officer of the Association since 1920.²

172 On July 12, 1935, Askew wrote the Association members informing them of the amount collected, and stated:

The fact that this Bill [the Act] has become law does not affect the status of our Association, so far as I am able to learn, except that its expense must be borne by the members instead of by the Company * * *. We still have the machinery for handling our problems in Local Joint Conferences and Mr. J. E. Warren, Vice-President, has assured me that if any matters are referred to the higher officers of the Association he will ask that the proper Management Representatives get in touch with such officer in order to handle these matters to a conclusion.

Askew added that "we should retain our present Association" and upon personal assurance given him by Warren,³ informed the membership that "the Management wished to co-operate with the Association in every way possible."

On July 16, Warren called a meeting in Atlanta of the respondent's ranking supervisory employees. Askew and Wilkes, of the Association, attended by invitation. Warren read Sections 7 and 8 of the Act to the meeting, stressed employees' right of self-organization, and announced that the respondent would follow a "hands off" policy. The substance of his remarks was thereafter transmitted by word of mouth to their subordinates by the re-

² Wilkes was secretary to the general commercial manager and the chief engineer of the respondent at Atlanta from 1934 to 1940, when she became personnel supervisor over the entire territory of the respondent, working under J. S. Kerr, assistant to the president, at which time she resigned her office and membership in the Association. Askew had been State Cashier of Georgia since 1929. His duties were to pay the salaries of the respondent's employees and its expenses in that State according to information furnished him by the accounting department. Askew resigned from the Association in 1939 because he was considered by the employees to be a supervisory employee. While it does not appear that Wilkes and Askew had clear supervisory powers, they were not engaged in ordinary plant work, their duties allied them more closely with the management of the respondent than with the other employees, and it is reasonable to assume that to such employees they represented the management. They thereby occupied a strategic position to translate to the employees the desires of the respondent. We find that the respondent was responsible for the activities of Wilkes and Askew in conducting the canvass for contributions and in initiating the movement for a "new" Association which are discussed infra.

³ Warren, on account of the illness of the respondent's president, was then its acting chief executive. He succeeded to the presidency during August 1935.

spondent's more than 120 high officials, and was by these subordinates transmitted to the general body of employees.

On July 20, the respondent issued the following notice which came to the attention of its employees:

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MEMORANDUM

WAGNER BILL INTERPRETATIONS

The Company can continue to pay salaries of Association officers who are filling their regular jobs and doing Association work incidental to their regular duties.

The Company can continue to pay the salaries of Association officers while engaged in confering (sic) with Management and while they are meeting among themselves before or after these conferences to discuss their presentation or disposition of the matters involved. Salaries cannot be paid when Association officers are devoting their time solely to internal affairs of the Association.

The Company cannot pay traveling expenses. However, all Management Representatives are anxious to co-operate and will endeavor to meet Association officers at such times and places, as will be most convenient and economical.

The Association may continue to use Company premises for their meetings without charge. Space for the exclusive full time use of the Association could not be provided without proper charge.

Association Local meetings cannot be held on Company time.

The Association may use Company typewriters and other office facilities when such is incidental to the regular Company use of these facilities. Out-of-pocket expenses such as stamps, stationery and supplies cannot be borne by the Company.

Association Representatives may make limited use of toll lines upon the same basis as is effective for employees generally.

174 The expense of preparation and distribution of the Minutes of Joint Conferences will be borne by the Company.

Issued July 20, 1935.

On August 26, a small committee of the General Assembly, governing body of the Association, met at Askew's call in the respondent's Atlanta office. The committee formulated certain changes in the constituted and joint agreement of the Association and obtained the agreement of the respondent through H. S. Dumas, assistant to Warren, that should the changed joint agreement be approved by the Association, the respondent would enter into it. Dumas also agreed that the respondent would check off dues for the Association.

On August 30, a special meeting of the General Assembly "to formulate plans for financing and continuing this organization in

accordance with the provisions of the Wagner Labor Relations Bill" was held in Atlanta. Askew resigned and was succeeded by Weil⁴ as president. Dumas addressed the meeting and informed those present that as an economy measure, joint conferences would be called in the future only at the request of the Association; that such meetings would no longer be used by the respondent for "discussions of sales, safety practices, etc.," and "where Management wished to use the facilities of the Association to broadcast information these meetings would be considered strictly as special meetings called by Management, the expense of which could be lawfully borne by them." The revised constitution⁵ and joint agreement were approved and it was resolved that weekly dues of 5 cents for women and 10 cents for men be collected from the membership.

The new joint agreement eliminated "all reference to the Company financing the expense of the Association," incorporated the new plan for calling joint conferences, was silent respecting recognition of the Association as the bargaining agent of the respondent's employees, and was terminable on 60 days' notice. Pursuant to Dumas' promise, it was signed by the respondent and the Association on September 3, 1935. Notwithstanding that it was by its terms effective on execution,⁶ both the respondent and the Association claim that an understanding existed that it was not to become effective until such date as the new constitution should be ratified by the Association, and that pending such ratification, the Association did not exist.⁷ The inconsistency of this contention with continued action by the "old" Association is underlined by the fact that Warren admitted at the hearing that dues were checked off pursuant to agreement with the "non-existent" Association beginning November 1, 1935, although the new constitution was not ratified until February 1, 1936. He also admitted that at the time he signed the agreement on September 3, the "new" Association had made no showing of membership, and that, although he would not have signed a contract with the Union without some showing of membership, he did not think it was unusual that the Association should be able to show to prospective members a signed contract with the respondent before it even came into existence. Moreover, Weil on September 3 sent a letter

⁴ Weil was "plant practice supervisor" of the Louisiana Division of the respondent from 1935 to 1939. His duties included the distribution, clarification, and interpretation of plant routine instructions received from the head office of the respondent in Atlanta. What is said above respecting Wilkes and Askew, applies to Weil, and we find the respondent responsible for his activities in the Association. Weil became assignment office supervisor at New Orleans in 1939, in charge of 25 or 30 employees, but nevertheless maintained his membership in the Association.

⁵ Ratified by the membership February 1, 1936, and further discussed infra.

⁶ All other joint agreements became effective as of the date of their execution.

⁷ Weil testified that he believed the passage of the Act to have ipso facto "disbanded the Association." Wilkes testified that the Association did not exist between September 3, 1935, and February 1, 1936.

to the members of the Association in which he referred to
 176 "our Association," the "revised constitution," and stated
 that our employee body, as manifested in your recent special
 contribution, desires no outside influence in our ranks. * * *
 On September 11, in a letter to "All Local Chairmen" he stated,
 "your Association is on trial." He described modifications of
 the preamble and Article I of the constitution as changes, which
 "while not affecting the operation of our plan, were desirable in
 that they eliminated many references to the Company"; other
 changes or "proposals" he referred to as "amendments." Wilkes,
 in a communication of September 18, pointed out that "this pro-
 posed Constitution is in reality an Amendment to your present
 plan. * * *". The new constitution was by its own terms "a
 revision [which] is hereby adopted superseding the Constitution
 effective May 1934," and provided prerequisites of one and 5
 years' membership in "the Association" for holding local office
 and for the office of president, respectively.*

The resolution for collection of dues⁹ adopted by the General
 Assembly was approved by a required majority and Wilkes on
 October 1, 1935, sent membership applications and check-off au-
 thorizations to "Local Chairmen" of the Association for signature
 by employees. In her instructions respecting these matters, she
 pointed out that membership applications were to be signed "by
 each member who desires to continue his or her membership in the
 Association * * *" and "when requesting the present members
 of your Local to sign the new applications for membership
 * * * it should be explained that the purpose of this form is
 to provide the officers of the Association with a complete and
 uniform record of membership in the Association and is
 177 not to be considered as a new application for membership."

Beginning November 1, the respondent began deduction of
 dues from the salaries of those who had authorized such pro-
 cedure. The dues were then paid over to the Association.

On February 1, 1936, after the revised constitution¹⁰ had re-
 ceived ratification, the joint agreement signed September 3, 1935,
 went into effect. A majority of eligible employees were members
 of the Association. Weil and Wilkes continued in office, the lat-

* Although Weil testified that it took several days and nights to complete a drafting
 of the "new" constitution, he was unable to explain why, after such minute con-
 sideration, the revisors continued to require 5 years' membership in "the Association"
 as a prerequisite for holding the office of president of the "new" organization.

⁹ This document stated, in part, that the "Association is threatened with impair-
 ment; an emergency is declared to exist."

¹⁰ Paragraph 1 of the preamble read:

The employees of the Southern Bell Telephone and Telegraph Company,
 Incorporated, formed in 1919 the Southern Association of Bell Telephone Em-
 ployees to provide facilities for adjusting by conference and cooperation all
 questions affecting the employees and the Management. This relationship
 between the Association and the Company has been in continuous operation
 since that time.

ter as general secretary-treasurer. The Association bank account remained in the same bank as before and in her name, her new title being substituted for acting treasurer.

During the period discussed above, all communications from the Association, including membership applications and dues deduction authorizations, and all communications to it, were handled by the respondent's inter-office mail facilities. The respondent furnished the Association information concerning the number of employees eligible for membership in the Association, extended the use of its facilities and premises for holding meetings, paid the salaries of Association members for time spent before, during, and after conferences with officials of the respondent on Association business, and permitted the use of its toll lines by officers of the Association if calls were made incidental to the respondent's business. Association mimeographing was performed on the respondent's machine, but was paid for monthly by the 178 Association, beginning August, 1935.¹¹ The general secretary used space in the respondent's offices for Association business without charge; the respondent permitted the free use by the Association of its typewriters, office facilities, and bulletin boards, and made no charge for deducting dues.

Both the respondent and the Association contend that by virtue of the distribution of the July 20, 1935, notice by the respondent, the termination "to a very large extent" of the respondent's financial support of the Association in accordance with such notice, and the dissemination of Warren's remarks of July 16, the Association was released of the ties which theretofore bound it to the respondent. We cannot agree with this contention. Warren's remarks were only verbally transmitted, third-hand, and since they were made but 4 days before publication of the notice, it must be assumed that in many instances they were brought to the attention of the employees only after receipt by them of the written notice which came directly from the respondent's executive officers. Far from stating that the respondent would no longer recognize the Association and thenceforth would pursue a "hands off" policy, such notice in fact announced an assumption, on the part of the respondent that the Association would continue to exist and function. Moreover, Warren himself admitted at the hearing that neither at the July 16 meeting nor at any time since has the respondent taken any steps to dissolve the Association and sever relations with it.

Furthermore, the \$5,000 in contributions, received in part after July 5, 1935, resulting from the canvass financed by the respondent

¹¹ This arrangement continued until February 1938, at which time the Association bought its own mimeograph machine.

ent and enabling the Association to carry on from that date to November, when deductions of dues began, is not to be overlooked. All contributions were later returned by the Association to those making them, but not until December, 1936, when it was for the first time financially able to do so. The respondent was never reimbursed for its expenses in this connection.

Moreover, the respondent never removed the impact upon its employees of its assistance to the Association in collecting such funds and its reasons therefor.

The contention that a break occurred between the respondent and the Association, rendering employee activity for self-organization free and uninspired by the respondent as of July 20, 1935, is therefore rejected. From the facts related above it is clear that the employees correctly read and understood the July 20 notice. Weil and Wilkes, the dominant figures in the Association, sought to reconcile their contention that a new organization came into being on February 1, 1936, with the findings above, inconsistent with their contention, by pleading unfamiliarity with technicalities, ill-advised use of significant terms, and the absence of counsel. Weil, however, testifying with respect to occurrences in 1937, stated that the Association did not then have counsel because "we had quite a few of the boys in our organization who were members of the Association who had studied law * * *". There is no showing that competent advice was unavailable to the Association in 1935-6. The Trial Examiner found, and we agree, that both Weil and Wilkes, while on the witness stand, gave indications of education, were articulate, and demonstrated complete qualification for affairs of the sort managed by them in connection with the Association. We therefore find that Weil and Wilkes, as demonstrated by their authorship of the documentary evidence described above, were motivated by a desire to continue the Association unchanged except for concessions respecting its more obvious financial support by the respondent. This was in accordance with the latter's own manifest wish.

3. The Events of February 1, 1936, to February 1941; Continuing Support of the Association

180 The minutes of the annual meetings of the General Assembly for 1936 to 1939, inclusive, refer to such meetings as the "17th" to "20th Annual Meeting [s]." The preamble of the constitution remained unchanged during these years and likewise placed the beginning of the Association's relationship with the respondent in 1919.

Weil continued as president until 1939, was its vice-president in 1940, and was still a member at the time of the hearing. Wilkes

continued as general secretary-treasurer until 1938, when she became vice-president-treasurer. She resigned her office and membership in 1939, when she became personnel officer of the respondent.

At the 1936 meeting of the General Assembly, it was resolved that the respondent be requested to restore salary and wage cuts then in effect. The reaction of the respondent thereto, while sympathetic, was negative. After the meeting, Wilkes wrote the division chairmen, on February 28, stating in part: "But try to remember, keep your people happy and lead them to be patient. We don't, I believe, have an awful lot to worry about. But you must help them to remember that our Company is run on sound and sensible measures and it is the duty of our Management to keep it so for the continued welfare of us all. We must approach Management with the same sound and sensible tactics." On August 28, 1936, Weil wrote the division and local chairmen of the Association announcing a \$450,000 wage increase granted by the respondent after negotiations with it.

In January, 1937, the respondent prepared and distributed to all employees the following notice:

MEMORANDUM

WAGNER BILL INTERPRETATIONS

The Company can continue to pay salaries of Association officers while engaged in conferring with management and 181 for incidental time while they are meeting among themselves before and after these conferences to discuss their presentation or disposition of the matters involved. Salaries cannot be paid by the Company while Association officers are devoting their time solely to internal affairs of the Association.

The Company cannot pay traveling, board and lodging expenses for employee representatives while engaged in Association business.

Space for the exclusive full time use of the Association cannot be provided by the Company without proper charges. The Association should be billed for Company office space used by the General Secretary for Association business.

Association Local Meetings cannot be held on Company time.

Out-of-pocket expenses, such as stamps, stationery and supplies, cannot be borne by the Company and Company mail cannot be used for Association business.

The Company cannot permit the use of its toll lines free of charge for purely Association business. The Company cannot provide free of charge telephones used exclusively for Association business.

The expense of preparation and distribution of a limited number of minutes of Joint Conferences will be borne by the Company.

The Company will discuss with the Association officers the question of proper charges for collecting association dues and the necessary procedure for making this effective.

Revised January 1937.

182 In April 1937, the following revision was likewise distributed by the respondent:

NATIONAL LABOR RELATIONS ACT

MEMORANDUM FOR SOUTHERN BELL TEL. AND TEL. CO.

The National Labor Relations Act prohibits an employer from contributing financial or other support to any labor organization; "Provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay."

In view of the provisions of this Act, the following summary is provided to be observed by this Company in dealing with the Southern Association of Bell Telephone Employees:

1. The Company can pay salaries of association officers while engaged in conferring with Management. The Company cannot pay salaries of association officers under the following conditions:

(a) While they are meeting among themselves before and after joint conferences to discuss their presentation or disposition of the matters involved.

(b) While association officers are devoting their time solely to internal affairs of the association.

2. The Company cannot pay traveling, board and lodging expenses for employee representatives while engaged in association business.

3. The Company should charge a fair rental rate when members of the association use Company space for the
183 purpose of conducting association business or for holding their monthly local meetings. These charges should be calculated on the proportional cost to the Company for the space used.

NOTE—The Company is now reviewing with the association officers the charges for such space.

4. The Company cannot permit the use of its toll lines for association business except at full tariff rates.

5. The Company cannot provide telephones for conducting association business except at full tariff rates.

6. The Company cannot permit elections on Company time and any Company premises used for this purpose should be confined to space rental as a meeting place.

7. Company Bulletin Boards cannot be used for posting association activities, notices or bulletins.

NOTE.—The Company is now reviewing with the association officers the matter of space which they might desire to rent for Bulletin Boards.

8. The Company can pay for copies of minutes of joint conferences for distribution to employees attending the joint conference meetings. The Company cannot pay for extra copies of these minutes for distribution among other members of the association.

9. The Company mails are not to be used for association business.

10. The Company has an agreement with the association officers for making payment for the cost of collecting dues under the payroll deduction plan. The Company cannot incur this expense without making the proper charges.

184. 11. The Company cannot engage in any activity designed to induce or prevent its employees from joining this or any other labor organization.

12. Association Local Meetings cannot be held on Company time.

13. Out-of-pocket expenses, such as stamps, stationery, and supplies for association business, cannot be borne by the Company.

14. The provisions of this Act make it illegal for an employer to dominate or interfere with the formation or administration of any labor organization, and the Management of this Company should conscientiously observe these provisions.

Revised April 1937.

The above-indicated changes were made. The Association thereafter paid for its use of toll-lines for dues deductions at the rate of one-half cent each, and for meeting places on the respondent's property at 75 cents for 4-hour meetings and \$1.50 for longer meetings; the Association rented an office in the respondent's Atlanta headquarters at \$84 per year;¹² and the respondent ceased to pay the salaries of Association representatives except for such time as they actually spent in conference with it.

The Association retained counsel in 1939, and the March, 1940, meeting of the General Assembly changed the preamble of the constitution, to be effective September 15, 1940, to read as follows:

The Southern Association of Bell Telephone Employees
185 was formed on the 30th day of August 1935, subsequent to the passage of the National Labor Relations Act, known as

¹² This arrangement was abrogated by the Association on November 1, 1937, when it took quarters in another building.

the Wagner Act, supplanting a former organization of employees by the same name.

Minor revisions were made in the constitution, but its provisions remained substantially unchanged. The minutes of this meeting referred to it as the "5th Annual Meeting."¹³ They were prepared by Clifford Dennis who succeeded Wilkes in 1939.

The 1940 joint agreement between the Association and the respondent was dated July 30, and together with other contracts entered into by the parties pursuant to its terms, was in effect at the time of the hearing. It provided that "the Association having certified to the Company that it has not less than 14,500 members in good standing who are employees, the Company agrees that this number constitutes a majority of the employees" and granted sole recognition to the Association for purposes of collective bargaining.¹⁴ Prior contracts were silent respecting recognition. The agreement provided that it remain in effect for 1 year and thereafter renewable for periods of 1 year, subject to cancellation by either party on 60 days' notice. Prior contracts were silent as to how long they were to be effective.

(4) The Events of February and March, 1941

On February 10, 1941, the Association having been previously informed that a complaint charging its domination by the respondent would be issued by the Board, wrote Warren 186 of this fact, stating that "because such a charge clouds this Association's right to represent the employees of the Company," the Association, pending a canvass of its members by signed ballot, would not act as the bargaining representative of the employees. The letter also called attention to the fact that a union "is seeking to organize certain of your employees."

On February 11, Warren acknowledged this letter and at the same time instructed his staff to refrain from in any way interfering with or influencing employees in their choice of representatives. Notices were posted on its bulletin boards at 2173 places by the respondent. They set forth Sections 7 and 8 of the Act, and stated:

The Company Recognizes Its Employees' Right to Join, Form or Affiliate With Any Labor Organization of Their Own Choice and Freely to Exercise All Rights Secured Them by This Act.

¹³ It will be remembered that both minutes and constitution had therefore dated the Association back to 1919.

¹⁴ Prior contracts, similar to this one, were entered into by the respondent without proof of the Association's representation of the majority of the employees. J. S. Kerr, assistant to Warren, testified that the respondent had knowledge of the Association's membership through the check off of dues.

The Company Guarantees Its Strict Compliance With All the Provisions of This Act and That No Employee Will Be Discriminated Against or Suffer Any Other Penalty Because of His or Her Exercise of Any Right Secured by This Act.

The Company Is Not Interested in Whether Its Employees Join or Do Not Join Any Labor Organization.

The Association thereafter polled its members by means of signed ballots. More than 15,000 members indicated that they wished the Association to represent them in collective bargaining and that they desired to continue membership therein.¹⁵

On February 28, the Association wrote Warren informing 187 the respondent of the result of its canvass and demanded exclusive recognition. Warren replied on March 3 and asked for copies of letters relating to the balloting sent out by the Association, the affidavit of the public accountant who tabulated the votes, and a copy of the ballot used. This material was sent to Warren on March 4. On March 6 he wrote the Association recognizing it as the "authorized collective bargaining agent of the employees of this company" and so informed his staff, asking that they "be governed accordingly."

The respondent and the Association contend that the Association, by its letter to Warren on February 10, 1941, "disestablished" itself as a bargaining representative for the employees. We do not so interpret its action. Warren testified that the respondent did not regard the Association's letter of February 10 to have constituted cancellation of the contract in effect between them. The contract was not re-executed after March 6, and the parties have continued to conduct their mutual affairs pursuant to its terms. Indeed the respondent made no move to withdraw recognition from the Association, or to deprive it of its firmly rooted and manifold advantages in the eyes of the employees. In his February 11 reply to the Association Warren merely "noted" that pending the canvass, the Association would not act as bargaining agent of the respondent's employees; he did nothing which would lead them to believe that he was removing his stamp of approval from the Association and leaving the field clear for an uninfluenced expression of opinion by such employees.¹⁶

5. Concluding Findings

The respondent sponsored the Association as an advisory agency supported by it for adjusting differences with employees 188 within management limitations. It was formed, existed, and functioned only through the respondent's control.

¹⁵ As of March 16, 1941, 15,713 members of the Association had so voted.

¹⁶ American Lumber Corporation vs. N. L. R. B., 119 F. (2d) 691 (C. C. A. 4).

financial support, and sufferance.

With the passage of the Act, the respondent therefore had a plain duty to its employees. As was stated in the Western Union case:

* * * an unaffiliated union, known for long to be favored by the employer, carries over an advantage which necessarily vitiates its standing as exclusive bargaining agent. It cannot remain such until measures are taken completely to disabuse the employees of any belief that they will win the employer's approval if they remain in it, or incur his displeasure if they leave.

Rather than so disabusing its employees, the respondent openly announced that the Association would continue to exist, and merely withdrew its more obvious financial support. Minor revisions in the Association were accomplished by Askew, Weil, and Wilkes. Askew ceased his activities before the revision was completed, but both Weil and Wilkes continued their leadership of the Association for several years thereafter. Such duplication of personnel coupled with substantial continuity of existence is indicative of continued domination by the employer.¹⁸

The Association, which originated in 1919, continued after the effective date of the Act, substantially unchanged, and not only without any "line of fracture,"¹⁹ but without so much as a change in name. Shortly after the effective date of the Act, the 189 respondent executed a contract with the Association, made its membership and dues deduction campaigns possible, and extended to it other support as more fully outlined above.

In January and April 1937, revised notices setting forth the respondent's position respecting the Association were issued. These notices too, instead of announcing that the respondent was severing relations with the Association assumed that the Association continued unchanged except as affected by further withdrawal of financial support to it by the respondent.

In February 1941, the respondent for the first time made an unequivocal announcement to its employees of their rights under the Act. It once more failed, however, to disassociate itself from the Association by any announcement of its discontinuance of countenance thereof. The effect of the domination and support of the Association by the respondent prior to and during the years since 1935, could not, under the circumstances, be dissipated except by an explicit announcement to the employees that the respondent

¹⁸ Western Union Telegraph Company vs. N. L. R. B., 113 F. (2d) 992 (C. C. A. 2).

¹⁹ International Association of Machinists vs. N. L. R. B., 110 F. (2d) 29 (App. D. C.), enforcing Matter of Serrick Corporation and International Union, United Automobile Workers of America, Local 459, 8 N. L. R. B. 261, aff'd 311 U. S. 72. See also Roebling Employers Association, Inc. vs. N. L. R. B., (C. C. A. 3), decided April 28, 1941.

²⁰ Westinghouse Electric & Mfg. Co. vs. N. L. R. B., 112 F. (2d) 657 (C. C. A. 2), aff'd 61 S. Ct. 736.

would no longer recognize or deal with the Association. In the absence of such action by the respondent, its employees were not afforded the opportunity to start afresh in organizing for the adjustment of their relations with the employer which they must have if the policies of the Act are to be effectuated.²⁰

The respondent and the Association contend that the results of the 1941 election, wherein a majority of the employees voted for the Association, should not be disregarded in evaluating the Association's status under the Act. Aside from the fact that the election was conducted under unilateral auspices and was in no sense secret, since the ballots were required to be signed, 190 we are of the opinion that the choice by the employees, of an organization which up to that time had been company-dominated, does not reflect a free choice, and cannot change the status of such organization. We have in prior cases refused to place a company-dominated organization on the ballot in a Board election. Reviewing our action in this respect, the Supreme Court, speaking through Mr. Justice Black, has said:

"* * * the Board justifiably drew the inference that this company-created union could not emancipate itself from habitual subservience to its creator, and that in order to insure employees that complete freedom of choice guaranteed by § 7, Independent must be completely disestablished and kept off the ballot."²¹

The respondent also contends that it engaged in arm's length bargaining with the Association and relies on the fact that it made concessions to this organization to support its contention. The fact that the respondent bargained with the Association and that the Association procured benefits for its members is immaterial under the Act, if the respondent has in fact interfered with, dominated, or supported the organization.²² We are convinced from the record that such interference, support, and domination has occurred.

We find that the respondent, by the above-described course of conduct, and by certain acts of its supervisory employees described in Section III B, below, has since July 5, 1935, dominated and interfered with the administration of Southern Association 191 of Bell Telephone Employees, has contributed financial and other support thereto, and has thereby interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

²⁰ N. L. R. B. vs. Newport News Shipbuilding and Dry Dock Company, 308 U. S. 241.

²¹ N. L. R. B. vs. Falk Corp., 308 U. S. 453, reversing mod'f. of Board's order in 106 F. (2d) 454; N. L. R. B. vs. Newport News Shipbuilding and Dry Dock Company, 308 U. S. 241-251; Bethlehem Steel Co. vs. N. L. R. B., May 12, 1941, (App. D. C.).

²² N. L. R. B. vs. Newport News Shipbuilding and Dry Dock Company, 308 U. S. 241; Corning Glass Co. vs. N. L. R. B., 118 F. (2d) 625 (C. C. A. 2).

B. *Other interference, coercion, and restraint*

During the fall of 1940, the Union began organizational activity at the respondent's Shreveport plant. A special local of the Union for employees of the respondent was established there on December 4, 1940. The Union's activity was known to the respondent.

There was undenied testimony that shortly after the local was formed, E. B. Mason, district traffic manager of the respondent at Shreveport, told Long Distance Supervisor Lora Sibley, "Mrs. Sibley, if you have any influence with your people, you should influence them against the union." Sibley thereafter told two operators that "we really did not need the union; that the Association was everything that they had or could get, you know, and I did not feel like that they would get any better, than that, than they did out of the Association." There was evidence that shortly after Mason made his remarks to Sibley, he was instructed by the respondent's general traffic manager that he and his associates must maintain a neutral attitude toward labor organizations in Shreveport. However, there was no showing that the traffic manager's reprimand of Mason was ever made known to the general body of employees at Shreveport.

About March 1, 1941, Hazel Bostick, toll operator at Shreveport, and chairman of the Association local there, resigned her office.²³ She gave as her reason for resigning that she believed Mason had not properly considered a grievance advanced by her as chairman of the Association local. Proceedings to select her successor were held on the respondent's premises shortly after her resignation. Before balloting on this question, Ina Lee Burrows, operator, met Vivian McCain, employment supervisor, in the rest room. According to Burrows, McCain inquired which side she was on; Burrows replied, "I am on my own side"; McCain then told Burrows, "It is a shame we can't fire all of these old dissatisfied employees and replace them with new girls that would be appreciative of their jobs." McCain testified that she merely inquired of Burrows, "Which side are you on?" and that she had reference to Bostick's successor. In effect, McCain denied making the statement attributed to her by Burrows regarding the discharge of dissatisfied employees. The Trial Examiner accepted Burrows' testimony as being in substantial accord with the facts. He found that McCain's remarks respecting dissatisfied employees clearly referred to Bostick, and that under the circumstances they were inimical to the Union. We find that McCain made the remarks attributed to her by Burrows.

²³ She had applied for membership in the Union during November 1940.

The respondent contends that since it has 9,000 exchanges and more than 20,000 employees, the two incidents at Shreveport are trivial and unimportant. However, we are impressed by the fact that in Sibley's statement to the operators specific reference was made to the Association, and the respondent's preference for the Association was clearly pointed out; and that both of the anti-union statements recited were made at Shreveport at the time the Union made its first attempts to organize in the Southern Bell System.

We find that the respondent, by the statements and acts of Mason, Sibley and McCain, described above, has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

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IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce, and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in and is engaging in unfair labor practices, we will order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that the respondent has dominated and interfered with the administration of Southern Association of Bell Telephone Employees and contributed financial and other support thereto. Since the effects and consequences of such practices with respect to the Association and its continued recognition as a bargaining representative, constitute and will constitute a continuing obstacle to the free exercise by the respondent's employees of their right to self-organization and to bargain collectively through representatives of their own choosing, we will order the respondent to withdraw all recognition from, and completely disestablish the Association as the representative of any of its employees for the purpose of dealing with the respondent respecting grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment.

Having found that the respondent entered into contracts with the Association embodying recognition of the Association as such representative; and that such contracts were the result of, and tend to perpetuate the effects of, the respondent's unfair labor practices, we will order the respondent to cease and desist from giving effect to or performing any contract between the respondent and the Association relating to rates of pay, wages, hours of employment, and other conditions of employment, now existing, and to refrain from entering into, renewing, or extending any contract with the Association relating to such matters. Nothing in this Decision and Order shall be taken, however, to require the respondent to vary those wage, hour, and other substantive features of its relations with the employees themselves, if any, which the respondent has established in performance of any contract as extended, renewed, modified, supplemented, or superseded.

Upon the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

Conclusions of law

1. International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, and Southern Association of Bell Telephone Employees, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the administration of Southern Association of Bell Telephone Employees, and by contributing financial and other support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By interfering, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

Order

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Southern Bell Telephone and Telegraph Company, Atlanta, Georgia, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner dominating or interfering with the administration of Southern Association of Bell Telephone Employees, or with the formation or administration of any other labor organization of its employees and from contributing financial and other support thereto;

(b) Recognizing Southern Association of Bell Telephone Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, and other conditions of employment;

(c) Giving effect to, or entering into, any contract or arrangement with Southern Association of Bell Telephone Employees relating to rates of pay, wages, hours of employment, or other conditions of employment;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Southern Association of Bell Telephone Employees as a representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said Southern Association of Bell Telephone Employees as such representative;

(b) Immediately post notices to its employees in conspicuous places throughout all its offices, plants, and places of business and maintain such notices for a period of not less than sixty (60) consecutive days from the date of posting, stating: (1) that the respondent will not engage in the conduct from which it is recommended to cease and desist in paragraphs 1 (a), (b), (c), and (d) hereof; and (2) that it will take the affirmative action set forth in paragraph 2 (a) hereof;

(c) Notify the Regional Director for the Fifteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 23 day of Sept. 1941.

[SEAL]

HARRY A. MILLIS,
Chairman,

WM. M. LEISERSON,
Member,
National Labor Relations Board.

1 Before the National Labor Relations Board,
Fifteenth Region

Case No. XV-C-617

In the Matter of SOUTHERN BELL TELEPHONE AND TELEGRAPH COM-
PANY and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
A. F. OF L.

Statement of evidence

ROOM 324, OLD POST OFFICE BUILDING,
Atlanta, Georgia, Monday, March 17, 1941.

The above-entitled matter came on for hearing, pursuant to
notice, at 10 o'clock a. m.

Before JOSEF L. HEKTOEN, Trial Examiner.

Appearances

Warren Woods, New Orleans, Louisiana, appearing for the
National Labor Relations Board. Marion Smith, E. W. Smith,
and John A. Boykin, Jr., Atlanta, Georgia, appearing for South-
ern Bell Telephone and Telegraph Company, Atlanta, Georgia.
Frank A. Hooper, Jr., and Samuel A. Miller, Citizens and South-
ern Bank Building, and James A. Branch and Thomas B. Branch,
Jr., Hurt Building, Atlanta, Georgia, appearing for Southern
Association of Bell Telephone Employees, Trust Company of
Georgia Building, Atlanta, Georgia. O. A. Walker, Interna-
tional Representative, 259 Merrick Street, Shreveport, Louisiana,
appearing for International Brotherhood of Electrical
2 Workers. G. X. Barker, 1020 South 42nd Street, Birming-
ham, Alabama, appearing for International Brotherhood
of Electrical Workers, 1200 15th Street, N. W., Washington, D. C.
E. H. Williams, 223 Ward Building, Shreveport, Louisiana, ap-
pearing for American Federation of Labor, American Federation
of Labor Building, Washington, D. C. George L. Googe, Atlanta,
Georgia, Southern Director, American Federation of Labor, ap-
pearing on behalf of American Federation of Labor.

15 **HOWARD M. ASKEW**, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by **Mr. Woods**:

Q. **Mr. Askew**, you are an employee of the Southern Bell Telephone and Telegraph Company?—A. I am.

Mr. Woods. **Mr. Examiner**, in accordance with the practice in the State of Texas, to which I am admitted, I would like to declare this witness an adverse witness, and claim the privilege of leading him or cross-examining him, if it should become necessary.

Trial Examiner HEKTOEN. Well, let us take up any implications that might have when and if, in your opinion, it becomes necessary.

By **Mr. Woods**:

Q. How long have you been employed by the company,

16 **Mr. Askew**?—A. 40 years, the past February 11th.

Q. And what is your present position with the company?—A. Georgia Cashier.

Q. How long have you held that position?—A. Since February 1, 1929.

Q. Now, **Mr. Askew**, have you at any time been a member of the Southern Bell Telephone Employees Association?—A. I have.

Q. Do you recall when that association was originally organized?—A. A preliminary meeting—

Mr. Branch. Did you mean to designate the Association by its correct name?

Mr. Woods. It is the Southern Association of Bell Telephone Employees.

Mr. Branch. You spoke of the Southern Bell Telephone Employees Association.

Mr. Woods. The correct title of the Association is Southern Association of Bell Telephone Employees.

Trial Examiner HEKTOEN. And hereafter, you will refer to it for convenience, as the "Association," is that correct?

Mr. Woods. Yes.

By **Mr. Woods**:

Q. Will you proceed and tell us when it was originally organized?—A. It was originally organized in the Summer of 1919.

17 Q. And at that time, were you an employee of the company?—A. Yes.

Q. **Mr. Askew**, from your memory, can you tell whether or not there were any labor disturbances back in 1919, that had anything to do with the organization of the association?—A. Yes, sir;

there had been several labor disturbances and strikes in the different cities of the Southern Bell Telephone and Telegraph Company.

Q. And was the original organization of the Association in any way related to those strikes, as to purpose?—A. It was, I suppose, in a way, a direct result of some of those disturbances.

Q. Now did you become a member of it at the start in 1919?—A. I don't remember the exact date that the General Office Local, of which I am a member, was organized, but it was sometime between August and December of 1939.

Q. And did you keep your membership in that organization down to July 5, 1935, the date of the passage of the National Labor Relations Act?—A. I did.

Q. And during that period of time, did you hold offices in the Association?—A. Yes.

Q. That is a general office, as opposed to a local office?—A. I was General Secretary from January 1, 1929, until March 18, 1928.

Q. And thereafter?—A. I was chairman of the Judiciary Committee from March 1930 until March 1933, and President from March 1933 until August 30, 1935.

Q. Are you at present a member of the Association?—A. No.

Q. When did you cease to be a member of it?—A. I think it was in January 1939.

Q. Now, Mr. Askew, I call your attention to the time in 1935, immediately preceding the passage of the National Labor Relations Act, that is, in the Spring of 1935, and ask you to state if, in your position as president of the Association, you took any steps with reference to the possible effect on the Association of the passage of the National Labor Relations Act?—A. I did.

Q. I wish you would outline briefly for us what steps, if any, you took during April and May of that year?—A. Well, I outlined the situation as I saw it. The Act had been passed, as I recall, by the House, and was under consideration by the Senate. Pending this Act, from time to time, I wrote to the membership of the Association outlining the prospective passage of this law and pointing out to them the effect, so far as I then knew it, it would apparently have on the Association. In the latter part of April, after the House had passed the Act, and it appeared almost a certainty to be passed by the Senate, I arranged to make a canvass of the Association to secure funds to be available when the Act became effective, for its operation in the Association.

Q. Now, did you make arrangements for that canvass of the membership before or after, as you recall it, holding a meeting with some of the general officers of the Association in Atlanta?—

A. I made them beforehand.

Q. Beforehand?—A. Yes, sir.

Q. Now, in what way did you make those arrangements?—A. Well, "Arrangement" is probably not the best definition of what I did. I realized when the Act became effective, and we had no treasury or funds of any sort, that we would be unable to proceed as an organization, unless something was done about it, and I talked by telephone with one or two of the members, officers of the Association, and suggested, in my judgment, we might make a canvass of the membership to secure contributions from each one of them, and then I called in the four general officers of the Association and submitted this plan to them.

Q. You say you called them in. Do you mean you called them into Atlanta?—A. Into Atlanta, and at this meeting, we apportioned the territory and they went back to present it to their colleagues and make a canvass of the entire company.

Q. Mr. Askew, was the approximate date on which you called in these four general officers of the Association in the month of May or around the first of May of 1935?—A. No, I think it was earlier than that. I think it was in April.

Q. At any rate, do you know whether or not the expenses of these officers for coming into Atlanta, that is, their traveling expenses, and their per diem, and salaries while they were away from work, were paid by the company?—A. Yes.

Q. Now, at that time, up to the passage of the Act; were all expenses paid by the company?—A. They were.

Q. Now, Mr. Askew, after this meeting in Atlanta, as you recall it, during April of 1935, was a canvass made as you had arranged?—A. It was.

Q. Now, just prior to your meeting during the month of April 1935, did you at any time consult with Mr. Dumas, or consult with any officers of the company?—A. Yes, sir.

Q. Regarding your plans for reorganization?—A. Yes, sir.

Q. With what particular official or officials, do you recall that you conferred?—A. I don't recall talking to anybody then except Mr. Dumas.

Q. And Mr. Dumas' position at that time was what?—A. I believe he was assistant to the operating vice-president.

Q. I know it is pretty hard to remember that far back, Mr. Askew, but can you give us the substance of your talk with Mr. Dumas?—A. Well, I simply told him what I had in mind, and that this Act had passed in Congress, and was liable to be passed

in the Senate any day, and that I would like to have these people relieved of their jobs to make this canvass, and I would like to have the company's cars, where they were available, because it has been our practice, for economy, to make trips around the territory in that manner.

Q. Now, did Mr. Dumas acquiesce in your arrangements?—A. Yes; he acquiesced in it.

Q. And then the canvass was actually made, at the expense of the company?—A. Entirely so.

Q. So that the record may be clear, will you state, as well as you can recall it, the names of those general officers who attended this committee meeting in Atlanta in April of 1935?—A. In the Commercial Department, F. B. Patterson of Augusta.

Mr. MARION SMITH. I think, Mr. Woods, it will be more clear if we called them the general offices of the Association because that might apply to the company also.

Trial Examiner HEKTOEN. That will be so understood.

The WITNESS. In the Traffic Department, Miss Lée Hanie of Montgomery, Alabama. In the Plant Department, L. H. Weil of New Orleans. I am not sure, but I think from the Accounting Department, we had Mr. Scribner of Atlanta.

Q. Could it have been Mr. Baugman?—A. No; I thought it was Mr. Baugman at the time, but I have learned that Mr. Baugman, who was the chairman, since I talked to you, I found that Baugman was away at that time, and he was not on that particular committee, and Mr. Scribner, the vice-chairman, came in his place.

Trial Examiner HEKTOEN. Do you know his first name?

The WITNESS. H. R. Scribner, and I think Mr. J. C. McManus of Charlotte, North Carolina.

By Mr. Woods:

Q. Now, was Mrs. Jane Wilkes there as secretary?—A. Yes.

Mr. Woods. Mr. Reporter, will you mark this Board's Exhibit 4 for identification?

(Thereupon, the document referred to was marked "Board's Exhibit No. 4" for identification.)

By Mr. Woods:

23 Q. Now, Mr. Askew, I show you Board's Exhibit 4 for identification, so marked by the reporter, purporting to be a copy of the Constitution of the Southern Association of Bell Telephone Employees, and the general agreement between the management and the Employees' association, effective May 23, 1934, and ask you to state if this is the constitution that was in effect during the year 1934-1935?—A. It is.

Mr. Woods. I offer it as Board's Exhibit 4. I don't think there is any objection.

Trial Examiner HERTZEN. It will be received.

(The document heretofore marked "Board's Exhibit No. 4," for identification, was received in evidence.)

Mr. MARION SMITH. May we have a general understanding that formal proof shall not be required of documents, unless one of us raises a question about it.

Trial Examiner HERTZEN. Very good.

By Mr. Woods:

Q. After this canvass of the membership has been made by representatives of the Association, did the Association then begin to receive contributions from the membership?—A. Yes.

Q. And by whom were those contributions recorded and kept?—

A. Mrs. Jane Wilkes, the general secretary; whom I appointed Acting Treasurer, as custodian of those funds.

30 Q. In connection with the letter dated August 1, 1935, Board's Exhibit No. 6, you state in the second paragraph thereof:

"So far as I am able to learn, there appears to be nothing in our plan of organization which is in conflict with the provisions of this bill and its only immediate effect is to require that expense of the Association be borne by its members rather than the Company. In connection with that statement was that at that time, still the substance of the advice which you, as the Association's President, had received with respect to the effect of the National Labor

31 Relations Act?—A. Yes, sir.

Q. At that time—

Mr. MARION SMITH. From whom? Do you mind asking him from whom he received that information?

Mr. Woods. Yes, sir.

By Mr. Woods:

Q. At that time did the Association have any attorney?—A. No, sir.

Q. From whom did it secure that interpretation, outside the statement that you attributed to Mr. Warren earlier?—A. The information that I was able to secure was based on various documents and discussion of it in the papers and in news letters, business comment, and so forth.

Q. Between July 12, 1935, and August 1, 1935, had you been in further consultation with Mr. Dumas, of the Company, regarding the effect of the Act on the Association and the necessity for

financing yourself?—A. I don't recall; I think the conference with Mr. Warren prior to that had covered about all the information we were able to secure on it; I don't recall the matter came up particularly, they were acting on the basis of this conference.

Q. At the time of the sending out of the July 12 letter, Board's Exhibit No. 5, and the sending out of the August 1 letter, Board's Exhibit 6, did the Association have any office?—A. No, sir.

32 Q. Independent of the Company?—A. No, sir.

Q. Where did it maintain its office and where did it do its work?—A. It was absorbed in the general work of the different employees who held the different offices.

Q. In other words, you kept your own files in your own office in the Company's office, is that right?—A. As to the letter of July 12?

Q. Yes, sir.—A. I am not sure; I can't remember the date exactly; I am not sure whether that letter was written just before or just after the conference with Mr. Warren—I don't remember the date of that conference, but it was sometime in July.

Q. With respect to that Board's Exhibit, No. 5, that was mimeographed, wasn't it?—A. Yes, sir.

Q. And sent out in mimeographed form?—A. Yes, sir.

Q. Whose mimeographing machine was used, do you recall?—A. It was done on the company's machinery.

Q. Both the stenographic and the mimeographing?—A. Yes, sir.

33 Q. And that same thing applies to Board's Exhibit No. 6, the letter of August 1?—A. Yes, sir.

Q. I notice that you state in Board's Exhibit No. 5, that \$1,856 had been received from 9,712 members of the Association up to that date?—A. Is that August 14?

Q. No, sir; July 12.—A. Oh, yes, sir. In the first paragraph.

Q. In the first paragraph?—A. Yes, sir.

Q. That is correct?—A. Yes, sir.

Q. And in Board's Exhibit No. 6, the August 1 letter, you state by that time over \$5,000 had been contributed by members for the necessary expenses of the Association?—A. Yes, sir; that had been coming in at intervals during this period there.

Q. In other words, that had been dribbling in still, between July 12 and August 1?—A. With all the scattered locals, it took some time for all of them to have meetings and pass on the question.

Q. So that they were still having meetings and passing on the question of contributions after July 12?—A. Yes, sir.

Q. Pursuant to the information given in your letter of August 1, Board's Exhibit 6, did you later formally call

34 for a meeting of a committee for the selection of a committee to discuss plans for the revising, amending or changing the framework of the Association?—A. Yes, sir.

Q. Can you tell us in what way that committee was selected?—A. The four major groups in the General Assembly of eight members each, and each one of those groups, by written ballots designated their departmental representative that they wanted to serve on this committee.

Q. In other words, those were the officers of the Association in existence at that time?—A. Yes, sir.

Q. And they selected?—A. From their own membership—

Q. A delegate to appear with this committee in Atlanta is that right?—A. Yes, sir.

Q. And do you recall when that committee meeting was held?—A. The last week in August, I think, along about the 20th and 25th, just about in that period.

Q. It was about August 27, wasn't it?—A. Well, about then.

Q. I think that the documents will show that.—A. The records will show that date.

Q. Do you remember the names of the persons selected on that committee that met on August 27?—A. From the Accounting Department was Mr. L. C. Baugnion of Atlanta; and from the Commercial Department, George F. Boardman, of Charlotte, and from the Traffic Department, Miss Genevieve Moore, of Louisville, Kentucky—and, I can't recall now who else was on that committee.

Q. There were four, however?—A. Yes, four of them, and there was someone from the General Office Committee, I think.

Q. In other words, there was a representative of the Accounting Department, from the Commercial Department, from the Traffic Department, and one from the plant and one from the General Offices?—A. Yes, sir.

Q. Were you, as President of the Association, actually a member of that committee in the sense that you sat in on its deliberations?—A. No, sir.

Q. Were you present while they deliberated?—A. No, sir; the only contact I had with them was to give them certain letters and recommendations that came in from the field in response to these letters that I had sent out for suggestions about the plan.

36 Q. Did you give to the committee any other information regarding the National Labor Relations Act or the proposed changes in the organization?—A. No, sir.

Q. Do you recall whether or not Mrs. Jane Wilkes, as Secretary of the Association, attended that committee meeting in her capacity as Secretary?—A. I don't know to what extent.

Q. She may have, but you don't know to what extent she came in on their meetings?—A. No, sir.

Q. While that committee was in session, do you recall whether or not you consulted with or conferred with any representative of the Management here, that is, either Mr. Warren or Mr. Dumas?—A. No, sir.

Q. Your answer is that you did not confer?—A. I did not.

Q. On any subject at all connected with the Association?—A. I don't recall any.

. . .

39. Q. Now, Mr. Askew, after your letter of August 29, Board's Exhibit No. 7, did you submit and have accepted by the Association, your resignation at the beginning of the General Assembly?—A. I submitted that at the beginning of the session of the General Assembly on August 30.

Q. On August 30?—A. Yes, sir.

Q. However, you convened the General Assembly as their President—in other words, you began it as President, is that correct?—A. Yes, sir.

Q. I show you Board's Exhibit No. 8, and call your attention to the first paragraph therein wherein it states that Mr. H. M. Askew, and so forth, having convened in special session to formulate plans for financing and continuing this organization in accordance with the provisions of the Wagner Labor Relations Bill, and I ask you to state if that first paragraph correctly states the purpose of the calling of that meeting, special session of the General Assembly?—A. The General Assembly was called for the purpose of doing what we then knew to be necessary
40 — to maintain the organization and, in substance, yes.

Q. And to continue it?—A. In substance, yes.

Q. Mr. Askew, there is only one other question about these minutes. I note in the minutes, after you had presumably resigned, a resolution here which relates to the meetings of the committee which had been in session since the 27th. This resolution states on page 5 of Board's Exhibit 8:

"On Saturday morning, before continuing with discussion of the revised plan, Mr. Boardman made the motion that he be allowed to read the following resolution:

"We, the members of the Special Committee selected for the purpose of revising the constitution to conform in principle with the provisions of the Labor Bill, wish to thank the Management for their cooperation and assistance in furnishing us the necessary

data which greatly facilitated the work of this committee." Do you know to what data that resolution refers?—A. I do not.

Q. After your resignation from the Association as President, did you continue as a member of the Association?—A. Yes, sir.

Q. Until you resigned, I think you said, in 1939?—
41 A. I think it was in January of 1939.

Q. At the time of your resignation, did you understand that you were then considered to be a supervisory employe?—
A. Yes, sir.

Q. Was that one of the reasons why you resigned?—A. One; yes, sir.

Q. But, in 1939, you held the same position that you have held in 1934, 1935, and 1936, did you not?—A. Yes, but in the meantime, there had arisen some question among some of the members of the Association as to whether I should be eligible to membership. There was no doubt about it under the constitution, but the question came up, and—

Q. As to whether or not your duties would be regarded as supervisory?—A. (No response.)

Q. What are your duties as Georgia Cashier?—A. To handle the disbursement of salaries and sundry expenses for the State of Georgia.

Q. It covers all departments in the State of Georgia, is that right?—A. Yes, sir.

Q. All salaries and expenses?—A. All salaries except the State heads.

Q. Of your own personal knowledge, do you have any information or knowledge of subsequent developments after your
42 resignation as President?—A. No, sir.

Q. I assume that you had nothing to do with the negotiation of the new joint agreement that resulted from the committee meetings of 1935?—A. None at all; no, sir.

Q. Just one other question on your position. I direct your attention to Board's Exhibit 3, and ask you to state if under the heading Vice President and Treasurer, State Cashiers, your name appears as H. M. Askew, Georgia—are you the H. M. Askew, Georgia, shown there?—A. I am.

44 Cross-examination by Mr. MARION SMITH:

Q. You said that you were a member of the Association from 1919 to 1939, I believe?—A. Yes, sir.

Q. During that time, did you have anybody reporting to you in your capacity with the company, I mean—did you have anybody under you reporting to you?—A. During part of the time, I did.

Q. Whom? A. I had, before I took the job of cashier in 1929, I was supervisor of the Mailing Bureau, and I had about seven or eight boys and young men working for me in that department.

Q. From 1929 to 1939, did you have anybody reporting to you?—A. I had an assistant who, in reality, reported to the Assistant Treasurer; I have no jurisdiction over their wages or working conditions; they reported to me only in the sense of dividing the work such as I specifically gave them to do.

Q. Aside from that assistant, was anyone under you for that time?—A. No, sir.

Q. From 1929 to 1939?—A. No, sir.

Q. Actually, your duties as Cashier are merely this: that the accounting department furnishes you a list of people to be paid and how much they are to be paid, and you pay them that amount, is that correct?

Mr. Woods. I object to that question on the ground that he is telling the witness what he wants him to say, and the witness is friendly to him, and he should not lead him in my opinion.

Mr. MARION SMITH. As a matter of fact, I am preparing to lead the witness, and if I haven't the privilege of leading the witness, then I won't do it, but I was setting out to lead the witness as it is customary to do on cross-examination, as I understand it.

Trial Examiner HEKTOEN. Such leading as this appears to be, it seems to me to be permissible; it merely is to establish his duties.

Mr. Woods. This person is listed on Board's Exhibit No. 3, as an executive of the Company, and when I called him as a witness, I declared him to be an adverse witness, and he must be assumed to be a friendly witness to the Respondent.

Trial Examiner HEKTOEN. I take it that you can get after it on redirect examination if anything comes up that you find it necessary to go into that regard.

Mr. MARION SMITH. I will try not to abuse the privilege, but you can save a great deal of time on such matters as this by a few leading questions.

Trial Examiner HEKTOEN. Read the question.

Mr. Woods. I will try not to object to a leading question, unless it is on a matter bearing rather importantly upon the issue.

Trial Examiner HEKTOEN. Read the question.

(Question read.)

The Witness. They furnish me the prepared checks for the individual employes in the Georgia division and for such items of expense as have to be paid by the Company.

By Mr. MARION SMITH:

Q. You say, however, that some of the members of the Association raised an issue as to your eligibility—you stated that, did you?—A. Yes, sir.

Q. And that on account of that, you resigned?—A. Yes, sir.

51 Q. You spoke of a canvass for 50-cent contributions in 1935 before the passage of the Wagner Act. Up to the Wagner Act, the company had paid all the expenses of the Association, had it not?—A. Yes.

52 Q. And the Association had no funds of its own?—A. Except a few individual locals, that had small, a nominal amount, used for sending flowers to sick members; but there was no large amounts.

Q. Substantially no treasury?—A. No.

Q. Those fifty cent contributions were sent in to Mrs. Jane Wilkes, were they not?—A. Yes, sir.

Q. And she acted as temporary treasurer of that fund?—A. Yes.

Q. She was on the committee that made solicitations, was she not?—A. Yes.

Q. There was, however, a canvass of the Association after the passage of the Wagner Act, for signature cards, was there not, Mr. Askew?—A. Yes.

Q. Really, there had been no signature cards of any kind before that time, had there?—A. No, sir.

55 Q. Did they not also canvass, seek and obtain written orders for membership dues from pay?—A. Well, that was the canvass I talked about, which was the application for membership and authority to deduct dues.

Mr. MARION SMITH. May I ask if any of you gentlemen have one of the cards, the membership cards, because this witness is mistaken about it.

Trial Examiner HEKTOEN. We will take a recess until 12:05. (Whereupon, a short recess was taken.)

By Mr. MARION SMITH:

Q. During the recess, have you refreshed your recollection as to whether there was a separate authority to sign to make deduction of dues from pay?—A. Yes, sir.

Q. What is your recollection, now?—A. There were two cards of different colors. One of them was to the company for the salary deduction, and one was an application for membership.

56 Q. You spoke of a canvass on company time. A canvass only on company time. You mean by "Only," a canvass for the fifty cent contributions?—A. Yes, sir.

Q. That, of course, was before any Wagner Act?—A. Yes, sir.

Q. And the canvass for these signed cards was after the Wagner Act?—A. That is my understanding.

Q. And as to that, you make no statement as to whether that was on company time or other time?—A. No.

Q. Mr. Warren's conference that you attended was in 57 what month, Mr. Askew?—A. In July.

Q. Of 1935?—A. Yes.

Q. It was after the passage of the Wagner Act?—A. Yes, sir.

Q. Without giving the names of those who were present, I don't mind the names, but just in classification, who were present at that time?—A. Well, I think the division heads.

Q. Of the telephone company?—A. Of the telephone company; of the different divisions.

Q. One complete state is a division?—A. Yes, sir; except in North and South Carolina.

Q. And over there, the Carolinas are a division?—A. Yes, sir.

Q. That would be eight division heads?—A. Yes, sir; and there were various supervisory people, and the general heads in Atlanta.

Q. That is the general offices in Atlanta?—A. The general offices, the general traffic, and the heads of the legal department. I think the ranking officer, and probably the next grade, in practically all of the departments in Atlanta were there.

Q. And you, as president of the Association, were present?—A. Yes.

58 Q. And was there anyone else from the Association present?—A. Mrs. Wilkes was there, and I think Mr. E. E. Fuller, General Plant Chairman, was there.

Q. Do you remember whether or not Mr. Warren read the Wagner Act to that meeting?—A. He read Section 7 of it; the meat of it.

Q. Did he comment on the Act?—A. Yes, sir; he commented on what it said they could not do.

Q. Can you remember some of the things they could not do? Did he say?—A. They could not pay any of the salaries and expenses on the Association work. I don't recall any other specific things that they said they could not do, at that time.

Q. Did he make a statement about whether the company expected to obey the Act?—A. He did.

Q. What statement did he make on that?—A. He made the statement that the company proposed to obey both the spirit and the letter of the law, to the best of their ability.

Q Did he give any direction to the Division heads as to what they would recommend to their supervisory officials, and subordinate officials?—A. He told them that they should acquaint
59 them with the provisions of this Bill, and the conclusions he had given them at the meeting.

Q Did he make any request of you, or the secretary of the Association, as to your transmitting the information to the employees, as to their rights under the Act?—A. I don't recall that he did.

Q You spoke of using some mimeographs of the company.—
A. Yes.

Q Do you know whether the expense of that mimeographing was reimbursed in the company?—A. It was not.

Q It was not?—A. No.

Q Are you certain of that, Mr. Askew?—A. Up to that time, yes; I was quite sure.

Q Up to what time?—A. Up to the meeting of this General Assembly. One of the things that Mr. Warren told us at this conference was that we could continue to use the company's typewriters, mimeographs and equipment, and so forth, and it was on that basis that they were not reimbursed.

Q Now, as a matter of fact, do you know whether the association reimbursed the company for these expenses, or not?—A. They did not while I was president.

60 Q When did you go out as president?—A. August 30, 1935.

61 : By MR. BRANCH:

Q Mr. Askew, you were asked, and answered to the effect that some time in the early part of the year 1935, prior to the passage of the Wagner Act, contributions were solicited from various employees for the purpose of raising a fund with which to finance the Association in the event the Wagner Act should go into effect, and I believe you answered that something like five thousand dollars, or in that neighborhood, was raised in that manner. Is that true?—A. Yes.

Q Now, that was before the Wagner Act was passed, wasn't it?—A. Yes.

62 Q At that time, the Association, so-called had no members, except that all the members of the Employee body of the Telephone Company were considered members of the Association as it then existed, isn't that true?

63. A. Not, that is not true.

Q. Well, what is true with respect to that?—A. It had a membership composed of such employees as voluntarily joined the Association.

Q. Was there any formal joining required?—A. In most of the locals, yes.

Q. How was that done?—A. They had a form of application which the employees signed, agreeing to obey the constitution, and then he was voted on by the members of the Local.

64. Q. Was there any requirement as to dues?—A. In some locals.

Q. Do you know what dues were charged?—A. A good many of the locals had the authority, under the constitution, to set their own dues, which were used purely for the benefit of the Local itself, and not for the expenses of the Association.

Q. So far as the expenses of the Association were concerned, there were no dues levied or collected, were there?—A. Not for the expenses of the Association.

Q. And so far as becoming members of the Association, was there any requirement that they comply with any particular formality to be members of the Association?—A. As far as I can recall, it was provided in the constitution that you could become a member on signing an application and agreeing to obey the constitution, provided you were not rejected by members of the Local.

Q. Now, which constitution do you refer to?—A. I think that has been incorporated in all of them from the beginning.

65. Q. After the meeting in August 1935, when a new constitution had been adopted, and you had ceased to act as President of the Association, isn't it true that those contributions were refunded to the employees who had made them?—A. Yes, they were; the fifty cent contributions were later refunded to the membership.

66. Q. And that was done by the Association as it existed under the new constitution that was adopted in August 1935?—A. It was done after 1935. I don't remember the exact date.

Q. The people who met and adopted that constitution, that was adopted in 1935—

Mr. Woods. Mr. Examiner, again I will have to correct counsel. There is no evidence in this record that any constitution of any kind was adopted in 1935, and, as a matter of fact, the proof will subsequently show that no constitution was adopted until January 1936.

Mr. BRANCH. Well, I will accept the correction.

By Mr. BRANCH:

Q. The constitution that was proposed in 1935, that became effective February 1, 1936, the people who met here to take action, when they thought necessary, did not agree with you on the plan of action that should be taken, did they?—A. I can't answer that question. I was not a member of the 1935 General Assembly. I don't know what their views were.

Q. Well, you had some views to the effect that they ought to go along under the constitution and simply arrange to assess dues, didn't you, Mr. Askew?—A. Yes; and a majority of the letters in response to that suggestion came to me endorsing the plan, and I don't know what opposition you referred to.

Q. You know that the plan was not endorsed and adopted
67 at that meeting, don't you?—A. I know it was not adopted.

Q. As a matter of fact, you had certain committee members in mind, and suggested them, and the meeting did not follow your suggestion, isn't that true?—A. Some of them did not.

Q. You yourself did not participate in any way in the August 1935 meeting, and did not even attend the meeting after the first day, did you?—A. I did not even attend all of the first day. I called the Assembly to order and tendered my resignation.

Q. And it was unanimously accepted, wasn't it?—Q. I can't answer that question.

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Redirect examination by Mr. Woods:

Q. Mr. Askew, counsel for the Intervening Association asked you a question or so about the membership arrangement under the Association as it existed prior to July 5, 1935. I direct your attention to page 14, Section 4, under Article 5 of the Constitution of the Southern Association of Bell Telephone Employees, Board's Exhibit No. 4, and ask you to state if that section is the section to which you referred when you stated there were certain membership requirements of the old Association?—A. Yes, sir; that is the provision that I had reference to.

Q. And that provision, as stated in Board's Exhibit 4, states:
"An eligible employe may become a member of the proper
69 Local by signing and filing with the Secretary thereof an application for membership, in which the employe agrees to abide by the Constitution and the By-Laws of the Local; provided that such application is approved by a majority of the members of the Local."—A. Yes, sir.

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Q. Who was your immediate superior to whom you reported?—A. During this time or up until a short time be-

fore I resigned, I reported to Mr. P. W. Greene, Assistant Secretary and Treasurer.

Q. Of the corporation?—A. Yes, sir.

Q. And at the present time, you report to Mr. J. P. Warren, Assistant Treasurer?—A. Yes, sir.

Q. Mr. J. P. Warren occupies the position immediately under that of the Vice President and Treasurer, is that correct?—
74 A. Yes, sir.

Q. On the chart which is Board's Exhibit No. 3, is that correct?—A. Yes, sir.

Q. Were your duties, for the most part, confidential duties in that you were not supposed to reveal to any other persons information passing under your observation?—A. As to salaries.

Q. That is correct?—A. Yes.

Q. You were asked certain questions with respect to the distribution for signature of certain cards in October of 1935—one of those cards being a membership form card, and another being a dues deduction card. I believe you testified you didn't know how the distribution was effected generally, and the only knowledge you had was with respect to yourself?—A. Yes, sir.

Q. Were you asked to sign one of those cards?—A. I was sent one.

Q. Do you recall whether it was dues deduction card or a membership card?—A. Both of them; I signed both of them; one was a white one and one was a blue one as I recall it.

Q. How were you sent the card—was it sent to your home residence address, or to your office address?—A. I couldn't recall, Mr. Woods.

Q. Did anyone ask you to sign the cards, or did it come to you only through the mail?—A. No one asked me.

Q. It came to you through the mail, as you recall it?—A. I think it came through the regular distribution of the mail, the intercompany mail, because, at that time, we were, as I stated, still using the facilities of the Company; I am quite sure that it came through the usual distribution of the intercompany mail by messenger service around through the Hurt Building.

* * *

77 Q. Do you recall, in substance, any explanatory statements that Mr. Warren made with respect to the meaning of paragraph 7 of Board's Exhibit No. 9, which reads:

78 "Association representatives may make limited use of toll lines upon the same basis as is effective for employees generally."—A. As I understand his explanation of that, certain employees in connection with the transaction of the Company's business are authorized to use the toll lines and he has

stated that if incidental to the Company's use of these they discussed matters of the Association, that it would be permissible.

Q. Now, what is the basis effective for employes generally in the use of Company toll lines?—A. Well, I think below certain grade of supervisory people employes are supposed to get authority from their supervisor before using the line.

Q. What was the basis, so far as the Association was concerned here, as to what that practice was?—A. The Association's officers, the general officers and the division officers, and the district people; and I presume any Local outside was authorized reasonable use of the toll lines in connection with the Association's business before the Wagner Act.

Q. And after its passage?—A. Well, after it was passed, it was supposed to be limited as to matters, incidental matters discussed in connection with contacting each other about Company business.

Q. But what I was trying to get at was that he said, "Association representatives may make limited use of toll lines upon the same basis as is effective for employees generally."—I don't know what he meant by "limited use," and that is what I had in mind.—A. I mean in accordance with the practice that I have just outlined, that certain supervisory people had had authority to use the toll lines in the past as distinguished from those others who had to secure permission, and it didn't preclude them if they asked for permission.

• • •

Re-cross-examination by Mr. MARION SMITH:

Q. Mr. Askew, with regard to the distribution of those salary checks; did you draw those checks, or did they come to you already written?—A. They came already prepared to me, with the pay roll.

Q. And who prepares them?—A. They are prepared in the accounting department.

Q. By the clerks?—A. By the clerks in that department, and the checks are written on the payroll machine.

83 Q. Now, whatever information those checks disclosed, as salary, is also known to the purely clerical help of the accounting department at the time, is it not?—A. Yes, sir.

Q. There is no special confidence in you about those checks, is there?—A. What I meant about being confidential, was, I was not to tell other people what the employees got. That is what I meant by confidential handling.

Q. And those checks came to you already prepared?—A. Oh, yes. A number of the clerks in the accounting department drew them.

Q. And you distributed them?—A. Yes; I delivered them.

Q. And by "Delivering them," delivering the checks, you mean you sent the checks out, gave them to the men?—A. That is right, I sent them and balanced them, and paid them out.

Q. And they are already written up when they get to you?—A. Yes.

Q. As I understood you, prior to the steps taken in 1935, there was no general membership list of this Association?—A. That is correct.

Q. You know some of the locals had membership lists?—A. Yes, sir.

84 Q. Did you know affirmatively whether some did not have membership lists?—A. No; I am quite sure most of them had membership lists, but probably not kept up to date, but they did have a list of the membership.

Q. Do you know that some of them had no list at all?—A. No.

Q. But the first over-all complete list that was sent out, was after these steps in 1935?—A. Yes.

Mr. MARION SMITH. That is all.

By Mr. BRANCH:

Q. Mr. Askew, it is a fact, is it not, that the majority of the members of this committee that was brought in here to discuss ways and means of getting ready to comply with the Wagner Act, did not agree with a lot of the things that you suggested?—A. I can't answer that, Mr. Branch.

Q. Well, you know that there were various suggestions which you made that they refused to accept, don't you?—A. Some of them.

87 Q. Now, you were asked about those applications for membership, the papers to be signed by you for the deduc-
88 tion of dues, coming through the mails. Do you know of any restriction on employees getting personal mail?—A. No, sir. I stated that that came under this ruling of Mr. Warren at the conference, that they could not use the facilities for that new plan.

Q. As a matter of fact, employees constantly get mail addressed to them in care of their place of business?—(No answer.)

Mr. BRANCH. That is all.

. Redirect examination by Mr. Woods:

Q. Mr. Askew, do you know whether or not it is still the practice to receive personal mail through the company office?—A. Yes.

Q. That is true here in Georgia?—A. Yes.

Mr. Woods. The next witness is Mr. L. H. Weil.

LLOYD H. WEIL, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Woods:

Q. Mr. Weil, are you at present an employee of the Southern Bell Telephone and Telegraph Company?—A. Yes.

Q. How long have you been employed by the company, Mr. Weil?—A. Twenty-three years February 1, this year.

Q. What is your position with the company?—A. Assignment Office, Supervisor at New Orleans, Louisiana.

Q. When did you first become assignment officer supervisor?—A. I think it was some time in July 1940; July 1939, rather.

Q. July 1939?—A. Yes.

Q. That happened to be the year before last?—A. Yes.

Q. Now, what are the duties of the assignment office supervisor?—A. He has supervision over some 25 or 30 people, and is responsible for the assignment of telephone numbers, cable pairs, and assigns the scheduled information necessary to install a telephone after the order has been issued by the Commercial Department to the business office.

Q. Prior to the time that you became assignment office supervisor, what position did you hold?—A. I was Plant Practice Supervisor of the Division Office.

90 Q. How long did you serve as Plant Practice Supervisor?—A. From April 1935 until I assumed this position as Assignment Officer, which I have.

Q. And, in general, will you give us a brief description of your duties as Plant Practice Supervisor?—A. I was responsible for the distribution of plant routine instructions sent down from the General Office to the Division Offices, to be distributed to the proper plant people responsible to me, and in some instances, clarified or interpreted some phases of the particular instruction that might not be understood by the ordinary employee who is to use them.

Trial Examiner HEKTOEN. Where did you say those instructions came from?

The WITNESS. From the General Office of the Telephone Company.

Q. By "General Office," you refer to the Atlanta Office of the Southern Bell Telephone and Telegraph Company?—A. That is right; the Atlanta Office of the Southern Bell Telephone and Telegraph Company. I was in the Division Office at that time, the Louisiana Division.

Q. Mr. Weil, do you recall what year you first became a member of the Association?—A. Around 1920 or 1921.

Q. How long after that was it that you became an officer of it, that is, a general officer, I mean, not referring to a local office?—A. What do you mean by "General Officer"?

Q. Either vice-president, general secretary or General Assembly representative?—A. General Assembly representative, I could not tell you the date, but somewhere around 1929 or 1930.

Q. Perhaps my question was not clear. For example, were you a representative in the General Assembly up to 1923?—A. That is right; I was not an officer. I was delegated to the General Assembly representing the Plant Department in Louisiana. We were not recognized as officers; we were plant representatives for the State of Louisiana.

Q. You say you became a general officer in 1929 or 1930?—A. I became a convention officer, a member of the General Assembly.

Q. In what year?—A. Something around 1929 or 1930; I am not sure.

Q. From that time on, state, briefly, what offices you have held in the Association?—A. Vice-president, and president, and general department head, that is, chairman of the general plant department board, and vice-president, and president, and then back to vice-president again.

Q. You have given those titles in chronological sequence?—

A. Yes.

92 Q. Can you give us about the years that you held those offices?—A. Vice-president, I think I was vice-president in 1934. I am not so sure about these years, and you will have to take them a year one way or the other. Vice-president in 1934 and 1935, and up until September of 1935, or August 30, 1935. President in 1936, 1937, and 1938, through March 1st of 1939.

Q. And then you became vice-president?—A. Then I became vice-president to serve the current term from 1939 until April 1940, at which time I was retired.

Q. Are you now a member of the Association?—A. Yes, sir.

Q. You were—you are not an Associate Member, but you are a member?—A. We have no Associate Members.

Q. At this time?—A. You are either a member or not.

Trial Examiner HEKTOEN. I don't know how important it is, Mr. Weil, but did you say that you retired as vice-president and an officer of all kinds in 1940?

The WITNESS. That is correct.

Trial Examiner HEKTOEN. Now, you are just a member?

The WITNESS. Just a member.

Q. Mr. Weil, you have been present in the court room throughout the day, and you heard the testimony given by Mr. Askew, did you not?—A. Yes, sir.

Q. You recall Mr. Askew testified that there was a canvass made some time in the year 1935 for the purpose of soliciting fifty cent contributions?—A. Yes.

Q. Were you or not a member of the committee which was called to Atlanta during either the latter part of April or some time early in May, to discuss a plan for soliciting such contributions?—

A. I was. However, I was not one of the general department officers. I was vice-president, but I was elected by the Plant Department to represent them on that committee.

Q. Are you referring to that committee, or are you referring to the August 1935 meeting?—A. You are correct about that. I will withdraw that.

Q. My recollection is that you were not a member of this first committee, the general officers called in there early in April or the first part of May?—A. I was not.

Q. You were not in there at the time, but you were actually a member?—A. Yes.

Q. You were an officer?—A. Yes; I was vice president of the Association.

Q. So, when this committee met in the latter part of April or early in May, you came in and discussed the plan with the officers?—A. I did.

Q. And after that committee met, do you recall whether you were appointed in Louisiana and Mississippi to make the canvass?—A. As I recall it, I was appointed for Louisiana and Mississippi.

Q. And do you recall that that was around the first part of April, or the latter part of May?—A. It was in the latter part of April or the first part of May.

Q. And how long did you take to make your canvass?—A. From the latter part of April until the first of June.

Q. And you were away how long from your work?—A. Something like ten days.

Q. What procedure did you follow in talking to the Locals, and what did you tell them?—A. I proceeded to send out letters to the then officers of the individual Locals, requesting them to arrange for a meeting of the employes in their particular vicinity, in their particular town, and to bring in other folks in the immediate vicinity, so that we would talk to them regarding the request for contributions.

Q. And during the campaign you used headquarters exchanges?—A. That is right, the exchanges where these particular

members might be located, and where they could bring in the folks from the smaller communities when, and if they came in there for that particular headquarters exchange.

Q. When you reached the plant, what statement did you make to the employees? What did you tell them in substance?—A. I explained to them the possibility of the Wagner Act being enacted, and the effect that it would have on our organization; that it would outlaw it, and we had to do something about it if we expected to operate an organization by the employees themselves, and that in order to do that, it would be necessary to have funds. I urged that they contribute the amount of 50 cents each, which we told them we felt like was sufficient to establish ourselves, and that it was to be purely voluntary, and nobody was requested to get up, whether they wanted to or not, and while it was possible that the Wagner Act might be enacted into law, that the consensus of opinion was that we would want to go out on our own.

Q. Whose consensus of opinion was that?—A. The consensus of opinion of quite a few of the officers of the Association, as well as my own.

Q. Go ahead?—A. That is about all.

Q. During the time that you were making this canvass, was your salary, your salary and traveling expenses paid by the Company?—A. It was.

Q. Now, according to the testimony of Mr. Askew, after the passage of the Act, the National Labor Relations Act, there was another meeting of a small elected committee held in Atlanta just before the September Assembly, around August 27 of 1935. Do you recall that meeting?—A. I recall that meeting, but I think it was earlier than that.

Q. You think it was earlier than the date I have indicated, August 27?—A. My recollection is it was. It would have been at that time.

Q. Were you elected a representative of that committee?—A. I was notified to that effect.

Q. Representing what department?—A. The plant.

Q. And did you attend the sessions of that committee?—A. I did.

Q. Where were they held?—A. In the Hurt Building, Atlanta, Georgia.

Q. What office in the Hurt Building?—A. It was up on the 17th floor, or the 15th floor, I don't recall.

Q. One of the Telephone Company's offices up there?—A. Yes.

Q. During the course of this meeting, Mr. Weil, did the committee have any conferences with representatives of the Management

of the Company, particularly Mr. Dumas or Mr. Askew?—A. We had one with Mr. Dumas.

Q. Was that a conference between the full committee and Mr. Dumas?—A. It was.

98 Trial Examiner HEKTOEN. You have reference now to the specially elected small committee?

The WITNESS. Yes, sir; that is right, in August, 1935.

Q. Besides Mr. Dumas, do you recall whether or not there was any other attorney or representative present?—A. I do not.

Q. Will you tell us, Mr. Weil, the substance of the conversation, and what the committee discussed with Mr. Dumas?—A. You mean the conversation of the committee?

Q. No; between the committee and Mr. Dumas?—A. The only discussion with him was the discussion of an agreement, a preliminary agreement that the committee had drawn up that they hoped to get the management to agree to in the event that the newly established organization, that is, that we hoped to establish, and we wanted to follow it out at such time as it may have been adopted, and the agreement covered certain things which we thought were necessary as preliminary steps, and the only discussion was with Management to eliminate any possibility of having to come back at such a time as a new organization might be established.

Q. In other words, you discussed with Mr. Dumas the phraseology of a preliminary agreement?—A. A proposed preliminary agreement.

Q. Now, what was the outcome of this discussion between the committee and Mr. Dumas?—A. As a result of this discussion, did you actually work out an agreement, arrive at an agreement?—A. The agreement which was entered, incorporated later in our General Assembly minutes, was the thing we worked out.

Q. Will you tell us about how long your discussion with Mr. Dumas lasted?—A. We discussed the thing paragraph by paragraph, and I should say it took a better part of the day.

Q. After the committee met at an adjourned General Assembly beginning on August 30, 1935, were you elected by unanimous vote of the Assembly to succeed Mr. Askew as President?—A. I was elected to carry on, as I still retained title of President. I, however, was the Vice President, Vice President of the old organization, and when Mr. Askew retired, they seemed to think I would naturally succeed him, which I rejected on the ground that that was not correct, and that I would not accept a job by default. That is what it amounted to. I would not be selected to head it up, and I left the Assembly to give them an opportunity to vote

as they wanted to, and to let them select their man, and after there was a vote, I later came back, and was told I was elected to head up the Association.

Q. So that you presided over the entire Assembly sessions from July or August up until September 1935?—A. Until the time I went out.

100 Trial Examiner HEKTOEN. We will take a short recess. (Whereupon, a short recess was taken.)

By Mr. Woods:

Q. Before we go into what happened at the 1935 General Assembly in August of that year, just one or two more questions about the canvass of the membership on the solicitation of contributions. Did you ever individually, without assistance, the entire states of Mississippi and Louisiana?—A. I think I did, however, I did have the assistance of the State Departmental offices.

Q. Do you recall whether or not you personally contacted the people at the Shreveport Exchange?—A. I don't recall. I don't think I originally contacted them, so far as I remember, I went back; I think Mr. Crossan contacted those people and I went back, but my recollection is faint on that; I don't recall whether I did or not.

Q. Did you know, at that time, the name of the Shreveport Manager who then, I understand, was a Mr. Bair?—A. Do you mean the Traffic Manager?

Q. Yes.—A. Mr. A. F. Bear.

Q. It is B-e-a-r?—A. Yes, sir.

101 Q. How were these meetings usually arranged; did you get in touch with the Local Chairman first?—A. I can't tell you as to any others than for those that I arranged for myself. Do you mean to talk about the 50-cent contributions?

Q. Just the ones that you arranged.—A. The ones I arranged, I got in touch with them mostly by correspondence, and asked the Local chairman to arrange for the meetings, or the departmental offices; I say chairman, because sometimes it would be a departmental office group and sometimes it would be a group of people from three different departments, and sometimes it is necessary to contact the departmental group in one fashion or another, sometimes through the Secretary.

Q. Let me ask you this, did you just select them, certain of them to attend, or did you ask all of them to attend?—A. I asked them that all of the employe body as a whole. The reason for that was that we didn't have any membership records that you could bank on in any of these Locals.

Q. At the meetings that you held, were any representatives of the Management present also?—A. No, sir.

Q. That was in the latter part of May or the first part of June?—

A. No, sir. Now, unless you define whom you mean by the Management, I will say "no."

Q. I mean the Traffic Manager or District Departmental
102 Manager, or somebody like that?—A. No; they were not.

Q. Do you remember about what time of the day or night the meetings were held?—A. Most any time, most of them were held at night, the larger groups were held at night, some of the smaller exchanges, we would go by and catch them at neontime, and some of the others, ~~we would get them on their tricks; on some of the larger exchanges, when we would have to visit the exchange itself, they were gotten on tricks when they were off duty, when they were coming off duty, and we would talk to them at that time, very little time or meetings that I held were on the Company's time, but it was on the employe people's time. I was talking to the operators, and the operators couldn't be relieved; we had to get them on their own time:~~

. . .

103 Q. In the next succeeding paragraph on page 3 of Board's Exhibit No. 8, after a discussion of a proposal regarding expenses incident to joint conferences, the following sentence appears:

"The second paragraph of this agreement was amended to
104 care for this, pending Management's agreement." Can you state what was meant by the term "amendment to that agreement?"—A. My recollection there is vague; I don't recall the original one, but I think that was the part of the agreement whereby the 1934 agreement or the original agreement prescribed that Management had authority to call meetings of our organizations, of our District Committees, and so forth, however, this preliminary agreement that was drafted changed that in view of the expenses, the expense item that would be involved in having our people meet with the Management. They changed that whereby the Association only would have authority to call such meetings as that.

Q. So that the proposal made was to amend what *have* you have described as the preliminary joint agreement so as to make it only within the power of the Association to call such joint conferences?—A. Right; to change the preliminary joint agreement.

Q. The minutes, Board's Exhibit 8, continue to relate on page 4 thereof, in the first paragraph:

"The meeting reconvened at 1 p. m., and Mr. Dumas, Assistant to the President, entered the meeting." Do you recall Mr. Dumas was present at the meeting of the General Assembly on August 30 for a period of time?—A. I don't remember. You will have
105 to refer to the minutes of the meeting for that; I think that

he was; but I would have to accept the records of the minutes of that meeting.

Q. I hand you Board's Exhibit No. 8, and I direct your attention to the first paragraph on page 4 thereof, and I ask you to read that and state whether or not after reading that your memory is refreshed as to the attendance of Mr. Dumas, and some of the remarks that he may have made?—A. That is correct.

Q. In other words, that paragraph coincides with your own recollection?—A. Yes, sir; the sum and substance of it. Of course, I don't remember the details.

Q. Do you recall him saying, in substance, that this meeting was something like a declaration of independence?—A. Yes, sir; and it was generally recognized as such by all of us.

Q. Mr. Weil, my question is do you remember Mr. Dumas saying that?—A. I do.

Q. In the second paragraph on page 4 of the minutes, Mr. Dumas is quoted as having said:

"That possibly the joint conferences had not been used as they should that they had been used for the discussion of sales, safety practices, etc., when, as a matter of fact, they were never designed for such purposes."

106 Q. Can you state whether in the past that these joint conferences had been used for the purposes stated by Mr. Dumas, that is, whether it had been the practice that these joint conferences of the General Assembly used them for the discussion of those matters?—A. They were, and as a matter of fact, the Company was paying the bill for it, and so we were not concerned with how long they kept them there, and how much expense was incurred.

Q. And sales and safety practices were discussed at the joint conferences in the past—that is your answer?—A. Under the old association.

Q. What do you mean by the "old association"?—A. The one in existence prior to July 12, or the signing of the Wagner Law, the enactment of the Wagner Act into law.

Q. When did that so-called old association cease to exist?—A. When the Wagner Act was signed.

Q. On July 5, 1935?—A. That is right.

Q. And you say that it ceased to exist at that time?—A. That is my opinion of it.

Q. Well, did it disband or dissolve?—A. It was automatically disbanded, in my opinion.

Q. How?—A. The law disbanded it.

Q. The National Labor Relations Act disbanded it?—

107 A. Yes, sir.

Q. And except by the operation of law, as you have described it there, you know of no other way in which the old association was disbanded?—A. That is my opinion.

Q. Do you know of any other way than by the operation of law that the Association, the old association, as you style it, might have been disbanded?—A. No. Well, we could have all quit.

Q. But I am asking you about the facts in connection with this matter.—A. You asked me how it could have been disbanded.

Q. I asked you of any other way by which an attempt was made to disband the Association, otherwise than as you have testified, by operation of law?—A. No, sir.

* * *

111 Q. Did this small committee discuss the fixing or the assessment of dues and the plan for collection of dues?—

112 A. Yes, sir; it established the amount to be collected subject to the approval of a specially called General Assembly on a later date.

Q. Did the small committee also reach an agreement with the Company for the deduction or check-off of those dues.—A. It did.

Q. Now, Mr. Weil, I show you this document which has been marked by the reporter for identification as Board's Exhibit No. 10.

(Thereupon, the document above referred to was marked "Board's Exhibit No. 10" for identification.)

By Mr. Woods:

Q. Which document is headed "Articles of agreement between the Southern Bell Telephone and Telegraph Company, Inc., and the Southern Association of Bell Telephone Employees," and dated September 3, 1935, and I ask you to state if that is the agreement signed by yourself and an authorized representative of the Company on the date indicated?—A. That is an agreement signed by me—if that is the date that shows up in our record, that is the date.

* * *

113 Q. In reference to Board's Exhibit No. 10, I believe you have referred to this as the preliminary joint agreement. What do you mean by that term now with respect to Board's Exhibit No. 10? What is preliminary about it, in other
114 words?—A. As I understand it, it couldn't be put into effect until such time as our new organization got to functioning under the proposed Constitution that we wanted to have submitted to the General Assembly and ratified by the Employee body in the field.

Q. You state that was your understanding. Now, on what was your understanding bases?—A. That was a preliminary step that we took in order to eliminate the necessity of coming back after the Constitution was approved, if it was approved, and have to do it all over again.

Q. Mr. Weil, evidently you still misunderstand my question, I have stated what was your understanding. Now, on what information did you base that understanding?—A. We proposed it as such, the committee proposed that set-up.

Q. And who is the committee that you refer to?—A. The entire committee.

Q. This agreement did not go into effect on the date upon which it was signed, did it?—A. Substantially; yes.

Q. Now, Mr. Weil, I don't want "Substantially yes," but please answer my question.—A. I can't answer your question yes or now.

Q. I will ask it this way: did the agreement go into effect
115 on the date on which it was signed?—A. I would say "no."

Q. When was the agreement approved?—A. What do you mean? When we signed it?

Q. You say that it did not go into effect then—when did it go into effect, Mr. Weil?—A. When the Constitution of the new organization was approved by the membership in the field.

Q. Is there anything in this agreement, Board's Exhibit No. 10, which indicates that it didn't go into effect upon its signing?—A. No.

Q. Do you know if there is anything in the minutes of the Assembly on August 30 to September 2, 1935, at any point, which indicates that that agreement was not to go into effect until after its approval by the General membership?—A. No; only that the whole Assembly could not go into effect until that Constitution was ratified by the field.

Q. And nothing was done—A. Nothing officially could be handled.

Q. But it is a fact that you were spending money on that very Assembly, were you not?—A. That is right. With delegated authority to do it.

Q. Under what Constitution?—A. No Constitution; we had none.

116 Q. Who delegated the authority?—A. The individual members in the field, through their representatives to that Assembly.

Q. By that you mean the officers of the old association continued to usurp to themselves ultra vires authorities, and continued to act without any proper authorization?—A. No, sir; we were acting under designated authority, and were acting in an

attempt to establish the new organization and we were acting in that capacity until such time as it was established and carried on after the legislation of the new Constitution.

Q. Did you attempt, under this agreement of September 3, 1935, Board's Exhibit No. 10, to act as a bargaining agency between that time and time that the Constitution was adopted?—

A. We did not, not to my knowledge.

Q. On no occasion, did you confer with the corporation Management between those dates?—A. No; not so far as the bargaining was concerned.

Q. Between September 3, 1935—A. Insofar as bargaining; no, sir.

Q. And when was the new Constitution adopted?—A. It went into effect on February 1, 1936.

Q. When did you start checking off the dues?—A. The first deduction was October 31.

Q. And the Management, pursuant to the bargaining of 117 the small committee, the bargaining that the small committee had conducted, actually began to deduct dues before the Constitution was adopted—is that correct?—A. Yes, sir.

Mr. MARION SMITH. I object to that for the reason that the question is based on an assumption directly contrary to what has been shown by the evidence that has been adduced here—they deducted only where the individual employes had signed an assignment card authorizing a deduction from his pay, and that is according to the evidence that has been put into this record, and this question as asked assumed a different state of facts.

Trial Examiner HEKTOEN. What about that objection, Mr. Woods?

Mr. WOODS. Counsel is entirely wrong, because my question was that the small committee had negotiated for a deduction of the dues by check-off, and the answer to that question was in the affirmative, and then the next question was after the small committee had made that agreement did the Management begin deducting dues and paying those dues to the Association prior to the time of the adoption of the Constitution of the Association.

ME. MARION SMITH. I did not so understand the question. If that was the way the question was framed, that is all right, but the question he asked, I think you will find, was 118 something entirely different. If the reporter will read the question that he asked, there is no doubt about it.

Trial Examiner HEKTOEN. Apparently Mr. Woods intended to ask the latter question, as he has just now phrased it, and you have no objection to the question in that form, is that correct?

Mr. MARION SMITH. The way that the question was just framed by Mr. Woods in his statement, I have no objection to it in that form, but I do not think that the original question was in that form.

• Trial Examiner HEKTOEN. Read the last question as framed by Mr. Woods.

(Record read.)

The WITNESS. Yes, it did, prior to the time of the adoption of the Constitution, but not before a resolution, which had been submitted to the General Assembly, and then to the employe body as a whole, approving the dues deduction the amount of the assessment and the dues deduction.

By Mr. Woods:

Q. The General Assembly of what association?—A. Of the new Association; the General Assembly attempting to organize a new one.

Q. Who were the members of that General Assembly?—A. The designated officers, designated individuals who had served as officers of the old organization, but were designated as leaders to come in and establish the new one.

Q. Perhaps the thing I am confused about is the fact that throughout the minutes of Board's Exhibit No. 8, for example, I will give you the opening paragraph of those minutes, which reads:

"Mr. H. M. Askew, President of the Southern Association of Bell Telephone Employees called the General Assembly to order on Friday morning, August 30, 1935, at 10 a. m.; this body, composed of the various Division Chairmen, the President, Vice President, and General Secretary, having convened in special session to formulate plans for financing and continuing this organization—"

Now, can you explain why that language was used if this was not the same association?—A. No more than Mr. Askew was retiring, and it was his feeling all through that we would continue the organization that we had, merely attempt the assessment of dues, and, however, that was not the consensus of opinion of the group.

Q. Were these minutes prepared by Mr. Askew?—A. They were started out with his convening the Assembly; that was supposed to be a statement of fact by him in opening the assembly.

Q. He didn't write the minutes?—A. No, sir.

Q. In fact, he was gone before the minutes were prepared?—A. Yes, sir; but the minutes were drafted to reflect what action took place.

Q. And the next statement shown in these minutes is that, in the third paragraph—the fourth paragraph:

"The President asked that Mr. L. H. Weil, Vice President of the Association, take charge of the meeting."

And then the next paragraph begins:

"Mr. Weil, continuing, explained to the Assembly his willingness to serve as the President of the Association—"

Of what Association did you think that you were becoming President of when you said that you were willing to become President of the Association?—A. The new one that we were going to establish.

Q. You were becoming President of an Association that was not in existence?—A. It was in existence, because it was in existence preliminary to the adoption of the Constitution by a group of people brought to Atlanta to establish a new organization. We didn't have any Constitution, but an organization was there to keep our people bound together until such time as we could pass upon a Constitution.

Q. So that is the Association of which you were President?—A. Yes, sir; an association of employees.

Q. At no time were any of the members of the General Assembly elected by any other persons than those who were then members of the old association?—A. Not to my knowledge, they were not.

122 Q. Can you explain for us why, throughout the minutes of August 30, 1935, the proposals with respect to the constitution are referred to as amendments to the constitution?—A. Just a force of habit that we had been following for a number of years, and all of our folks, in submitting any change to anything, they would submit them in the form of an amendment. It was something for them to compare themselves with; they had a book of rules that indicated a line of procedure and they wanted a change. In most instances, they were telling us that they wanted a change, and when they had done that in the past, they had always referred to it in that manner, and this was no exception, when they wanted to amend this particular paragraph, they made the suggestion as an amendment.

Q. And you had, yourself, fallen into that same force of habit?—A. Yes, sir; because we had been doing it for years and years, and it was hard to get out of overnight.

Q. Now, this new nebulous association that was not quite then in existence, but was just about to become in existence, that you had there in August, 1935, that Association did not elect any new officers, did it?—A. You will have to come down from the use of that word nebulous. What is the meaning of that? That is a three dollar and a half word, and I don't understand it.

123 Mr. MARION SMITH: I don't think that that is the proper way to frame a question to the witness, because, among other things, it assumes a great deal; and it is argumentative.

Trial Examiner HEKTOEN. As to that, I will say that I am frankly puzzled as to what the witness thinks of the situation; it seems to me that the word nebulous possibly correctly describes it, but if the witness does not understand the meaning of the word nebulous, doesn't know what that word means, then maybe we should give him a two dollar and a half word, or something that he understands.

The WITNESS. Or perhaps a dollar and a half word.

Trial Examiner HEKTOEN. Maybe so.

Mr. Woods. Mr. Reporter, will you please read my last question, without using the word nebulous.

(Question read.)

The WITNESS. Not until February, 1936. Well, no, not until the regular officers were selected in the latter part of May 1935, somewhere around November or December, but the general officers were not selected until February.

Q. Do you mean that the officers of the old Association continued to function as the officers of the new, up until the General Assembly in February, 1936?—A. No.

Q. Who did?—A. There was an election; you will have to refer to the constitution for the time for we have changed those 124 periods of election so often that I can't remember them, but I think in 1935 the constitution provided, or we were following the proposed constitution which provided that officers would be elected in November. Local officers would be elected in November. District officers in January, and State officers in February.

Q. Now, let's confine ourselves, now, to the general officers—president, vice-president, and that would be March 1936, sometime in the latter part of March?—A. That would be March of 1936, sometime in the latter part of February of 1936, I would say.

Q. The officers at the time of the Assembly on August 30, 1935, after Mr. Askew resigned were yourself, president?—A. Yes, sir.

Q. And Mrs. Jane Wilkes as General Secretary?—A. She was temporary General Secretary.

Q. Did you have any other general officers?—A. We had a vice-president.

Q. Who was elected in February of 1935?—A. Yes, sir.

Q. And that was Mr. Ryder, an assistant?—A. Yes.

Q. Between the conclusion of the General Assembly on August 30, 1935, and the convening of the General Assembly in the latter

part of February 1936, did those three persons continue to
125 function as officers?—A. Yes, sir; they continued to function as the leaders of that group.

Q. I didn't ask you that, but I asked you did they continue to function as officers? I didn't ask you if they continued to function as leaders, but as officers?—A. I wouldn't say that they did.

Q. When did you elect Mr. Ryder vice-president, then? Was that a matter of habit, too?—A. There was a group of people gathered together that wanted to elect somebody or select somebody, and they gave them a title based upon the adoption of this proposed Constitution which had to be submitted to the field. We did not feel like we needed the constitution at all. We set up something there to get started on.

Q. Let's assume that you didn't need one, but did Mr. Ryder function as a vice-president, which was the office to which you apparently elected him?—A. I wouldn't say, as an officer, other than the officer selected as a temporary medium to carry over until such time as this constitution could be put into effect.

Q. You said that the constitution went into effect on February 1, 1936?—A. That is my recollection of it.

Q. Who functioned between that date and the convening
126 of the next General Assembly?—A. Those officers who were selected under a proposed constitution.

Q. In August 1935?—A. Yes, sir; the constitution we proposed in August 1935.

Q. Then you, who had been selected as the president, and Mr. Ryder, who had been selected as the vice-president, even though you didn't serve formally as an officer, from the time of your election to February 1, 1936, did become officers on February 1, 1936, is that right? Is that your testimony?—A. That is a matter of interpretation, I believe. I wouldn't say we did until the General Assembly convened and elected the new officers.

Q. Who convened the new General Assembly?—A. I did.

Q. In what capacity?—A. As president of that temporary body that was set up there to carry on until we could have a general assembly.

Q. And is that why you submitted to that General Assembly a president's report?—A. Yes, sir; because I felt that they should have a report made to them by me as to the activities.

Q. Did you sign yourself as president of an interim organization?—A. No.

Q. Did you sign your report to the Assembly as president of this Association?—A. Yes, sir; I was proud of the
127 title, and I wanted to use it.

Q. You considered yourself president of the Association?—A. I was president of a group of people.

Q. I show you a letter marked for identification by the reporter as Board's Exhibit No. 11, dated September 3, 1935; and I ask you if you recall having seen that letter?

(Thereupon, the document referred to was marked "Board's Exhibit No. 11" for identification.)

By Mr. Woods:

Q. That is the same letter that I showed you in my hotel room yesterday?—A. That is right.

Q. I didn't get your answer?—A. That is correct.

Mr. Woods. I offer the exhibit as identified.

Mr. MARION SMITH. No objection.

Trial Examiner HEKTOEN. Any objection?

Mr. BRANCH. No objection.

Trial Examiner HEKTOEN. It will be admitted without objection.

(The document heretofore marked "Board's Exhibit No. 11" for identification, was received in evidence.)

128

By Mr. Woods:

Q. I want to get this force of habit down "pat," now, Mr. Weil?—A. That is the same thing.

Q. In the first paragraph, you say:

"As advised in information furnished you on August 27, 1935, a small committee, elected by the General Assembly, one from each department, was called into Atlanta on Monday, August 26, 1935, to draw up temporary plans for the operation of our Association under the Wagner Bill—"

Will you reconcile that statement in your letter of September 3, 1935, with your statements on the witness stand that you had no Association?—A. No more than it should have been the operation of an Association.

Q. But it says "Our Association"—how do you reconcile that?—A. I can't do it.

Q. Your answer is that you can't do it?—A. It was our Association we were attempting to organize.

Q. Now, as I understand it, under your interpretation, no Association was in existence on September 3, 1935?—A. That is my opinion; it went out of commission when the Wagner Act went in.

Q. To what Association were you referring to when you

129 said in that letter:

"May I say in behalf of this committee and the General Assembly—the members of our Association should be proud."—

A. The one we were setting up.

Q. You addressed Board's Exhibit 11 "To members of the Southern Association of Bell Telephone Employees"?—A. That is the name we expected to keep.

Q. You didn't have any members yet, according to this?—A. We had a pretty good assurance that we were going to have many thousands of them.

Q. Then you were sending it to your anticipated and proposed and expected members?—A. Yes, sir.

Q. But you just said "Members"?—A. And the word "Members" there was inappropriate, in my opinion, but in addressing a circular of that particular kind at that time, you were really addressing it to the eligible employee body; by eligible, I mean those people who held positions lower than a particular level that would be accepted into the new organization, because there never was—to my recollection, and I had quite a few contacts throughout the field—a roster of membership that you could determine who were and who were not a member of the old organization. So that in addressing any circular for them, it was by reference
130 to them as members; it was a misnomer, in that the membership, if you want to refer to it as the old organization it was the employee body as a whole, and that is who we were talking to in that letter, and anybody eligible to become a member of this organization, that letter was addressed to them.

Q. And you stated in the third paragraph of this letter:

"As a result of the resignation of Mr. H. M. Askew, former president of the Association, at this past meeting, I, as vice president, automatically assumed the office of president." Were you acting then as a leader of a nonorganized group or did you consider yourself to be president of an association, as you had before?—A. Those are the minutes of that meeting; you can interpret it. I was acting as president of a previous group of people, or as president of the present group of people by virtue of the office that I held in the old organization. I was being designated, in the absence, or upon the resignation of the officer who presided over the organization, I was being designated to take his place, and I was assuming the office of president.

Q. According to your own testimony now, by virtue of having been vice president, you became president?—A. By the same fact that the officers or the people who were on that committee
131 or on that General Assembly were at Atlanta, by virtue of the same fact that they were there, so was I.

Q. You state in the fourth paragraph on Page 1 of Board's Exhibit No. 11:

"Perhaps the most urgent order of business enacted during this General Assembly was the passage of a resolution, copy of which is

enclosed, providing for the assessment of dues. It is imperative that this be handled by our entire membership immediately, and the results of the action taken, forwarded to the General Secretary on the form provided." When you say "It is imperative that this be handled by our entire membership immediately," were you referring to—A. I will have to repeat again that that would naturally mean the employee body eligible for membership in this new organization.

Q. Then you say in that same paragraph, continuing:

"If possible it would be very desirable to have the majority vote of the majority of the Locals in the hands of the General Secretary—"

To what Locals are you referring?—A. We were still recognizing the designated or the designations of the Locals by the numbers that they formerly had, and we were recognizing them by that designation in contacting them for that purpose.

Q. And you just assumed control over the old Locals?—A.

We gave them the same designation for the same reason
132 that we kept the same name as the old Association had.

We saw no reason to change it.

Q. In your own letter, Board's Exhibit No. 11, you stated on page 2 thereof:

"A copy of the revised constitution will be in your hands as soon as it can be prepared by the General Secretary—"

Mr. BRANCH. Did you intend to skip over that part where he spoke of the proposed constitution? Did you mean to skip that?

Mr. WOODS. I meant to ask the question as I asked it. You have a right on cross-examination to bring out whatever you like. You have the right of cross-examination.

Mr. BRANCH. I didn't know whether you intended to omit it or not.

The WITNESS. What was the question?

Trial Examiner HEKTOEN. Read the question.

(Question read.)

The WITNESS. Referring to the word "Revised?"

By Mr. WOODS:

Q. Yes, sir.—A. Force of habit to give them something to compare it with that they already had.

Q. Did you say force of habit?—A. Yes, sir; to give them something to compare it with that they already had.

133 Q. To what were you referring when you said:

"Our employee body, as manifested in your recent special contribution, desires no outside influence in our ranks?"—

A. We preferred to maintain an organization of our own, op-

erated by our own people, a representative bargaining agency between management and employees.

Q. When you referred in the last sentence of the exhibit to: "Assisting your Local Representative to make a report of your action as quickly as possible." To what individual were you referring as a Local Representative, beginning with the capital "L," in the word Local?—A. The people who had been officers of the old Local. We were using them as a medium to obtain this information.

Q. Mr. Weil, I show you a document marked as Board's Exhibit No. 12 for identification, addressed "To all Local Chairmen," dated September 11, 1935—

(Thereupon, the document referred to was marked "Board's Exhibit No. 12" for identification.)

By Mr. Woods:

Q. And having your typewritten signature thereon, and I ask you to state whether you recall if you wrote that?—A. Yes; I wrote it.

Mr. WOODS. I offer that document in evidence as Board's 134 Exhibit No. 12.

Trial Examiner HEKTOEN. Any objection?

Mr. MARION SMITH. No, sir; no objection.

Trial Examiner HEKTOEN. Mr. Branch?

Mr. BRANCH. I think I have a correct copy. I have no objection to it.

Trial Examiner HEKTOEN. It is received in evidence.

(The document heretofore marked "Board's Exhibit No. 12" for identification, was received in evidence.)

Trial Examiner HEKTOEN. Are you going to be materially longer with this witness, Mr. Woods?

Mr. WOODS. I will have at least two hours longer, yes, sir.

Trial Examiner HEKTOEN. Let's have another five minute recess at this time.

(Whereupon, a short recess was taken.)

Trial Examiner HEKTOEN. The hearing will be in order, please.

By Mr. Woods:

Q. All right, Mr. Weil, in your letter of September 11, Board's Exhibit No. 12, you headed it "To all Local Chairmen." What Local Chairmen were you addressing?—A. To the officers of the old—

Q. Association?—A. Organization—what is the date of that letter?

135 Q. September 11th?—A. Correct; that was the old one. We were still using that as a medium to transmit information to them.

Q. To the employee body?—A. To the employee body.

Q. In this letter, you also set forth the proposed budget, and referred to the expense to the company of the operation of the Association during the year 1934?—A. The old Association.

Q. Are those the figures that you secured from the company during the meeting of the small committee just before the Assembly of 1935?—A. My recollection is that they are, this is the expense only, no salaries and wages.

Q. When you say that you referred to the expense only, you referred to the itemized portion in the middle of Paragraph 2 on Page 1 of that exhibit, is that correct?—A. That is right, Expenses, and not salaries and wages.

Q. And salaries and wages are mentioned below?—A. In this next paragraph, that is correct.

Q. Now, on Page 2 of Board's Exhibit No. 12, the last paragraph on the page, you make the following statement:

136 "I have also heard in some few instances where you prefer to hold up your vote on the Resolution until you see the plan proposed." Referring to the constitution?—A. Yes, sir; that is right, the proposed constitution, and see how the funds would be absorbed and protected and guarded.

Q. And you continue in that last paragraph as follows: "May I assure you that it has been through no desire to 'Hold an ace in the hole' that this information is not already in your hands. Our proposed plan, similar to our present set-up but taking in as many economies as we felt could be justified at this time, and developing, through the general executive board, a much stronger organization, is thoroughly known by your division chairmen." And then you proceed to urge them to go ahead with the collection of dues, without waiting on the approval of the plan?—A. I urged them to collect the dues.

Q. Didn't you anticipate that would go on without the approval of the resolution?—A. Yes, sir; they were all holding up the collection of the dues, waiting on this approval, bearing in mind that regardless of the approval coming from a majority or not, only those people signing the dues deduction cards and the application cards only, would be the only ones that would have any deductions made from their salaries, and while this was addressed to the group of people, the assessment of dues was strictly made on an individual basis.

137 Q. Now, on Page 3 of Board's Exhibit No. 12, you state: "Remember—your Association is on trial." To what Association are you referring, there?—A. The association of the employees. I would say that that term was used to keep them acquainted with the fact that we had one and was going to continue one of our own.

Q. Well, let me put my question this way: Were you referring there, as you have defined it, to the old association, or were you referring there to the Association that was not yet in existence?—A. I would say that we had to be referring to the new one; we were referring to the new one.

Q. You meant the one that was not yet in existence, was then on trial?—A. The one that had not been adopted yet.

Q. Now, I show you a document marked as Board's Exhibit No. 13 for identification.

(Thereupon, the document referred to was marked "Board's Exhibit No. 13" for identification.)

By Mr. Woods:

Q. That document being dated on October 1, 1935, and signed by Jane H. Wilkes, General Secretary, and I ask you to state whether you have seen that? This is one of the documents I did not show you?—A. Is there some particular part of this statement that you want me to read, more than the whole thing, of this letter?

138 Q. Yes.—A. If so, we can save a whole lot of time, it seems to me. I know the general substance of it, but is there some particular section of it that you desire to refer to? I recognize the letter.

Q. You recognize the letter which is Board's Exhibit No. 13?—A. Yes, sir.

Mr. Woods. Then, under our usual understanding, this being one of the documents counsel have agreed might be submitted, I offer it as Board's Exhibit No. 13.

Mr. MARION SMITH. No objection.

Mr. BRANCO. No objection.

Trial Examiner HEKTOEN. It is admitted, without objection.

(The document heretofore marked "Board's Exhibit No. 13" for identification, was received in evidence.)

By Mr. Woods:

Q. In connection with Board's Exhibit No. 13, I ask you to read, particularly, the first paragraph at the top of Page 2 thereof?—A. All right.

Q. You have read that paragraph?—A. Yes, sir.

Q. Now, I direct your attention particularly to the paragraph that you have just read, at the top of Page 2 of Board's Exhibit No. 13, wherein it states:

139 "Forms 1 and 2 should be signed by each member who desires to continue his or her membership in the Association."

It states "To continue his or her membership in the Association"—and it continues: "Under the conditions of Resolution No. 1; also by any and all eligible employees who desire to join forces with us. When requesting the present members of your Local to sign the new application for membership, Form 1, it should be explained that the purpose of this form is to provide the officers of the Association with a complete and uniform record of membership in the Association, and is not to be considered as a new Application for membership." Will you try, for the record, to reconcile those two sentences with your own testimony heretofore, as to new and old and nonexistent, and existing Associations?—A. I wouldn't be able to; I remember the letter, but I don't recall approving that part of it as written by the General Secretary. Certainly, literally, as the letter reads, we are continuing membership. There were just so many of our people who had never signed an application for membership in any organization, was the reason for the opinion that I have held and that our general board has recognized that it was an entirely new application for membership, they had never signed one before, many, many of them.

Q. Now, won't you admit, Mr. Weil, in order to save any further questioning along this line, and as a matter of fact, that up until 1939, there was never any distinction made between the old and the new Association?—A. I guess I won't admit it.

Q. Pardon?—A. No, sir; I wouldn't admit it; there was a very definite distinction.

* * *

147 Q. Mr. Weil, I direct your attention to the first paragraph of Board's Exhibit 14-a, the covering letter—correction; the second paragraph, where it states:

148 "This proposed constitution is in reality an amendment to your present plan, and in accordance with Article XVI thereof"—that is, the present plan, "Shall become effective if ratified by a majority vote of two-thirds of the Locals within six months from the date of adoption by the General Assembly." Now, I ask you to state how you reconcile that statement with your testimony yesterday that you were not operating at that time under a new constitution?—A. To get back to the phraseology used in practically all that correspondence that went out, in referring to it, as I did in that letter, we were merely attempting to furnish the employee body in the field, something with which to compare themselves with. They were fairly familiar with the constitution of the old Association. We regarded that as important to them, and that, in submitting this to them, we could call their attention to the fact that there are certain

things which they had been accustomed to doing in the past, under the old Association, which, by comparison under the new, this was what we were going to have to do.

Q. Now, Mr. Weil, doesn't that sentence, put it this way, weren't you actually operating, however, under the constitution then effective?—A. I will have to repeat what I said before. We did not feel that we were; we were not.

Q. But you did submit the new constitution for ratification, in accordance with a provision in the old one, did you not?—

149 A. No; because it said six months, if I recall the wording of the letter there, whereas we sent it out and had it ratified within three. In other words, we gave them a specific date for the new one to be ratified by.

Q. In other words, the letter, when it says you are submitting it for ratification pursuant to Section XVI of the constitution, does not mean what it says, is that right?—A. It was not intended that way, the phraseology.

Q. Then, you misled your membership, is that right?—A. Not at all. Our membership understood entirely and very thoroughly, what we did, we were acting under their instructions.

Q. I think you are right, Mr. Warren.—Now, referring to Board's Exhibit 14-b, the "Outline of changes made and the reasons therefor," in the third paragraph you state:

"There were a few changes made in the preamble and Article I. It being felt that such changes, while not affecting the operation of our plan, were desirable in that they eliminated many references to the company." What was the purpose of eliminating those references to the company, as you recall it, and as it was expressed during the consideration of the changes?—A. The purpose and intention of it was, in order to conform with the

Wagner Act rules. We felt like we were establishing
149-A a new organization, and certainly, under the circumstances and under the terms of the Wagner Act, we had no intention of having any reference to the company, under the Wagner act, in our new set-up.

Q. Wasn't it your purpose to eliminate all portions of the plan which might be considered violative of the Act, but to retain the basic framework of the structure of the Association?—A. Not especially. We did retain certain phases of it; because we liked the method of operation, and saw no reason for changing it.

Q. A part of the sentence I just read to you states: "while not affecting the operation of our plan——"

What plan were you referring to?—A. The information was by comparison of what we did in the past and what we were going to do similarly in the future.

Q. Mr. Weil, do you recall any communication that you ever addressed to your membership, which told them that you were making all these revisions to the then existing or old plan, as you called it, solely for the purpose of giving them a convenient basis for comparison?—A. It never did occur to us. We definitely felt that they knew it.

Q. As a matter of fact, it never did occur to you except
150 after, except when after your attorney had gone over the constitution?—A. It never did occur to us that it meant anything else. We were giving them the comparison, and we felt it was generally understood that way. I knew a lot of them did that I came in contact with.

Mr. Woods. I didn't get the last part of that.

Trial Examiner HEKTOEN. Read it.

(Record read.)

The WITNESS. I came in contact with a number of people there, our people.

By Mr. Woods:

Q. Now, you said in the fourth paragraph: "Your Local-set-up functions, under the proposed plan, the same as under the present Constitution." As I understand your previous testimony, it was to the effect that you were operating without a constitution at that time?—A. That is right, and that phraseology still refers to the comparison.

Q. Tell us, Mr. Weil, why didn't you say "Your old constitution," then? Why did you call it "Your present Constitution"?—

A. It was a matter of technical language.

Q. Was that force of habit?—A. We were not lawyers or legal talent; we were just laymen establishing that thing.

151 Q. Well, did you use the term "Present Constitution" through force of habit?—A. No; not particularly.

Q. Well, isn't it a fact, Mr. Weil, that you used that term because you considered and understood and were actually functioning under the then Association, which you have described as the "Old Association"?—A. It positively is not a fact.

Q. You stated in the last paragraph of Board's Exhibit No. 14-b, Page 1:

"The General Departmental Board functions in accordance with the present General Executive Committee except for a few minor changes as brought out in Article X." When you referred there to the "Present General Executive Committee," what General Executive Committee were you referring to?—A. That was a committee formerly functioning, composed of State officers, State Departmental officers, formerly functioning under the old organization,

and by comparison, there was no change in the set-up of the company.

Q. Why did you call it the "Present Executive Committee," if it was, as you call it "Formerly functioning"?—A. My answer is the same as before, the use of technical language in there.

152 Q. Force of habit?—A. No.

Q. Then, your consistent references to the "Present Constitution" and "Present Association," and "Our Association" during this time, your answer is not longer that the reasons for those references was force of habit?—A. My answer stands to all questions you asked, up to this one; all questions you asked previous to this one.

Q. And if there is any contradiction or irreconcilable statements, you still want to leave them?—A. Still stands. If there are any contradictions or errors, they are at a minimum.

* * *

162 Q. Article VIII of Board's Exhibit 15 concerns qualifications for holding office. Section 1 states: "Any member of a Local who has been continuously a member of the Association for one year, and has been a member of the Local for six consecutive months, immediately preceding his or her election, shall be eligible for any office in the Local." In the light of your statement regarding the new and the old Association, will you explain the meaning of that clause?—A. That was probably an oversight on the part of the people drafting the Constitution. As I stated before, we were laymen, we were not lawyers, and probably an oversight on our part in putting that in there. There is no question about it. I don't know that that particular part of the Constitution was adhered to because it was in the Constitution at the time of the elections for office. Certainly there is no
163 question about what it refers to, what it reads, and what it says. There is no question about it.

Q. Yes; I can read it.—A. Now, the only think I can say is it is an oversight on our part in writing it up as a bunch of laymen drawing up something to try to conform to the National Labor Relations Act.

Q. In other words, your statement now is that Section 1 of Article 8 was followed?—A. At that particular time it could not be followed.

Q. Do you know whether or not that section was lived up to in the operation of the Association?—A. I could not certify here for some 360 odd Locals out there in the field.

Q. This is your old basic document, isn't it?—A. That is right.

Q. Now, Section 2 of Article VIII states, on page 10 of Board's Exhibit 15, and I show you the document: "Any member of the Association who has been a member of the Association for at least

five years shall be eligible for the office of President."—A. The same answer applies there.

Q. That was an oversight too, was it?—A. Exactly.

Q. Do you know of any person who was even nominated
164 for President who had been a member of the Association for more than five years?—A. Nominated?

Q. Nominated?—A. I couldn't say, it would be hard for me to tell. In the General Assembly there are ten or fifteen or twenty people nominated.

Q. And the same eligibility provisions were made for the Vice president, is that right?—A. That is correct.

Q. Now, the 1932 Constitution, Board's Exhibit No. 4, the requirements then for eligibility for election to the office of President were ten years. Do you recall that?—A. I do.

Q. Do you recall that during the General Assembly of 1935, when the revisions in the Constitution were being discussed, that a revision of that particular clause was specifically under consideration and discussed, and the time reduced to five years?—A. You mean in the Assembly of 1935?

Q. Yes.—A. Is that the August meeting in 1935? That is correct.

Q. No more than that in proposing the new Constitution we
2 felt like restriction of ten years is too great, and we
165 should reduce it to five years. We felt a person with five years experience would be just as capable to handle the office as one with ten years.

Q. That is five years experience in the Association?—A. That is correct.

Q. Now, then, putting in this particular clause was not an oversight. It was deliberate, wasn't it?—A. It was an oversight in that we overlooked the fact that this organization would not be but a few months old, or just seventeen days old when our General Assembly met to elect the President.

Q. And, Mr. Weil, is it still your testimony that this organization we are referring to was not completely a continuation of the old organization?—A. Positively. It is our contention it was not the same organization. Possibly we used something of the old to establish the new, but in substance we were very definite in the feeling that we were establishing a new organization.

Q. Is it correct to say under this provision of the Constitution, this Constitution, a man could not be President or Vice President of the Association unless he has been a member of the old Association for five years?—A. It came out under that Constitution that we had to accept him with less service than that. Bear in mind this fact, that while it is true that it says five years

166 experience in the Association, the membership voting for the President certainly had the right to select that person most capable, and probably would have accepted anyone in the organization from a representation standpoint.

Q. Of course it does not say experience, Mr. Weil?—A. That was the purpose of putting it in the Constitution, that we would have an experienced person in there that knew the ropes and could handle our business. The only purpose for putting it in there.

* * *

167 Q. I show you Board's Exhibit 16 and call your attention to the first page thereof, which is described as page 9, however, "Section 1, synopsis, which says: "The 17th annual meeting of the General Assembly of the Southern Association of Bell Telephone Employees convened at 9:30 a. m., on Monday, February 17, 1936."

Mr. MARION SMITH. We can't hear you back there, Mr. Woods?

Mr. WOODS. It says: "The 17th annual meeting of the General Assembly of the Southern Association of Bell Telephone Employees convened at 9:30 a. m., on Monday, February 17, 1936."

By Mr. WOODS:

Q. What Association were you referring to there?—A. We used a continuous designation, but we were referring to the new one.

Q. You did not think you were referring to the same one, did you?—A. No; to the new one; not to the old.

Q. Why did you use "17th"?—A. As a matter of form, we used that designation.

Q. And why was it a matter of form?—A. We had never failed to have a meeting every year we had been in existence and it did not occur to us to change the designation of the number of years.

Q. You did not consider, then, that that Association then in existence was the same as the old Association?—A. No, we did not, no more than we used the same designations for the Locals and let them remain in the field.

* * *

170 Q. Referring, first, to Board's Exhibit 17, the letter dated August 28, 1936, you state on the second page thereof, after describing a procedure for granting wage increases, and underline this particular section: "Please bear in mind that this information is not as yet generally known and should not be discussed by you until such time as your Management Representative has been informed of the details and has gone into the matter thoroughly with you."

MR. MARION SMITH. Mr. Examiner, my understanding of that letter is that it refers to a wage increase that was granted, and not a procedure for granting it.

MR. WOODS. I presume the letter will speak for itself.

MR. MARION SMITH. Yes; but the question should be correctly stated. It refers to a \$450,000 wage increase and not the procedure for granting it.

MR. WOODS. Strike out the word "procedure." Referring to proposed wage increase.

By Mr. Woods:

Q. Now, the question about the language I asked you about is, do you recall when that wage increase actually went into effect?—

A. No, I don't; I can't remember that in connection with increases of that kind. Sometimes they stagger themselves; they—that particular one may have taken effect at a particular time or at once.

Q. Or it may have taken effect at alternate intervals?—A. Or it may have taken effect at staggering periods, alternate periods. I couldn't answer that question.

Q. Can you explain to us, in more detail than the letter itself does, how this wage increase was made known to the employees?—

A. It was made known to them through the medium of the State officers.

Q. Of the Company or of the union?—A. No; State officers of the Association. If—is it all right for me to go into the last paragraph I read?

Q. I wish you would.—A. In connection with that particular paragraph, the reason that that was put in there, in our conference with Management we reached an agreement on this proposed increase before the State Management people could be informed of it. In other words, our meeting here in the General Office granted us something that none of the State Management knew about. It was our feeling that certainly the Management people should know about these increases just about the same time that our people knew about it, so that questions put to them, or put to their supervisory personnel by the members could be answered intelligently by the Management supervisory people. That is the only purpose I had in saying that until the Management people—it was a matter of a few days, is all it was—"until the Management people in your State had been apprised of this agreement we had reached with the Management, don't put out this information."

Q. To the membership?—A. To the membership. I thought we could save ourselves a lot of grief as well as having to answer questions we could not substantiate.

* * *

174 Q. After the General Assembly of February 1937, do you recall having had any conferences with Management with respect to working out a system of charges for services performed for the Association by the Company?—A. What was that?

Trial Examiner HEKTOEN. Will you read the question?

175 Q. After February, after the General Assembly in February 1937—

Trial Examiner HEKTOEN. Read the question for my benefit too, will you, Mr. Reporter?

(Question read.)

The WITNESS. Yes; we had conferences with them and one of them was something on the charges for the deduction of dues.

Q. Were those conferences beginning in May of 1937, as you recall it?—A. I could not recall.

Q. Sometime during the Spring of 1937?—A. Sometime during that year, during that period, between the date that the letter went out and the General Assembly.

Q. Then, it would be sometime after June 1937?—A. Is that the date of the letter, June?

Q. June 12. Now, with what representatives of the Management did you confer?—A. I don't recall, possibly Mr. Dumas, or possibly Mr. Warren or Judge Kerr.

Q. Who called these conferences?—A. It was not exactly a called conference. It was one in which I continued negotiations. I was delegated, with authority, from the general Executive Board to continue negotiations on such matters as that, as Chairman of that Board, and I continued negotiations with the Management along that line from time to time, and my reason for answering that I could not tell you who I might have negotiated with, is that I might have spoken with Mr. Dumas, Judge Kerr, or Mr. Warren, or any one of them at any time as such things came up, that I felt should be taken care of, and from time to time I would confer with the Management and discuss the reasonableness or the possibility of their having them taken care of it, without paying for it.

Q. Do you recall that the National Labor Relations Board was found to be constitutional by the Supreme Court in April of 1937?—A. Yes, sir; I do.

176 Q. That date is a matter of judicial notice, that is the date of the decision of the Supreme Court was April 12, 1937?—A. Yes, sir.

Q. Refreshing your memory from that, can you state that discussions with regard to the charging for the collection of dues, discussions for rentals on the Company's premises for use as a

meeting place of the Association's Locals began after April and continued between April and your letter of June 12?—A. No; I wouldn't say that it did. I would say definitely that those negotiations were probably carried on prior to this General Assembly meeting in 1936. The reason for bringing those things up was more or less our becoming more familiar with the Wagner Act and reading and interpreting decisions handed down by the Board in other cases which involved such things as we were doing that we had nothing on, no definite information on at the time the Wagner Act was placed in effect and from those decisions, or you might say some of them were just criticisms of organizations that were supposedly recognized as so-called Company unions. And when such decisions as that came to our attention, we undertook to clear those things up in our own organization.

180 Q. What was the practice of the Association while you
were President up to your letter of June 12, 1937, with
181 respect to the use of the Company's premises for Local
meetings of the Association?—A. We held meetings on the
Company's premises without charge.

Q. What was the practice of the Association with respect to the use of the Company's facilities, like typewriters and things like that?—A. We were permitted to use them; it was our interpretation that it was within the meaning of the Wagner Act.

Q. For that interpretation, you relied upon the Company's interpretation as given in their memorandum of July 20, 1935, is that correct?—A. To some extent, to some extent, along with what we were able to determine from the reading of decisions that the Board had handed down from time to time. We subscribed to the Labor Reporter and another magazine from Washington, and they gave us decisions handed down by the Board in certain cases.

Q. Do you recall whether or not, do you recall ever having seen the document marked by the Reporter as Board's Exhibit No. 22?

(Thereupon, the document above referred to was marked "Board's Exhibit 22" for identification.)

By Mr. Woods:

Q. Headed "Memorandum, Wagner Bill Interpretation", and dated "Revised January 1937"?—A. Yes, sir.

182 Mr. Woods, I offer that document in evidence as Board's
Exhibit No. 22, being the document just identified by the
witness.

Trial Examiner HEKTOEN. May I see that one?

Mr. Woods, Yes, sir [passing the document to the Trial Examiner].

Trial Examiner HEKTOEN. Who is this supposed to come from?
Mr. WOODS. The Company.

Trial Examiner HEKTOEN. And it is given to Mr. Weil?

Mr. WOODS. I will straighten that out in a moment.

Trial Examiner HEKTOEN. Is there any objection of counsel?

Mr. MARION SMITH. No, sir; I think we can agree, it was broadcast by the Management and officers of the Association.

Mr. WOODS. I think that the record might show by stipulation between counsel that Board's Exhibit No. 22 was prepared by the Company and by it broadcast or distributed among all employees of the Company, supervisory and nonsupervisory.

Mr. MARION SMITH. Yes, sir; I think so.

The WITNESS. The question to me was, did I see that letter?

Mr. WOODS. Yes, sir.

The WITNESS. Yes, sir.

483 Mr. MARION SMITH. Do you want to take up the April 1 now and complete your record on that too?

Mr. WOODS. Yes, sir.

Mr. MARION SMITH. There was a revised interpretation in April 1937 that was handed in the same way?

Trial Examiner HEKTOEN. Board's Exhibit No. 22 is admitted in evidence.

(Document heretofore marked "Board's Exhibit 22" for identification was received in evidence.)

Trial Examiner HEKTOEN. And the stipulation with reference to the distribution and publication is satisfactory to every one. I take it?

Mr. WOODS. Mr. Branch has not made any statement in the record, Your Honor.

Trial Examiner HEKTOEN. Do you so stipulate, Mr. Branch, with regard to the publication and distribution of Board's Exhibit No. 22?

Mr. BRANCH. Yes, sir; I have no objection. Stipulate what?

Mr. WOODS. Mr. Branch, there was a stipulation made here in connection with this matter to the effect that it was prepared by the Company and distributed and circulated by the Company to all employees, both supervisory and nonsupervisory, and I ask you if you are willing to agree to that stipulation?

184 Mr. BRANCH. Oh, I will agree to it; I have no knowledge of it, but I will agree to it. I know that we have a copy of it in our file.

Mr. WOODS. Well, the stipulation is, of course, worthless unless it is without qualification.

Mr. MARION SMITH. I assure you, Mr. Branch, that my investigation shows that that is so.

Mr. BRANCH. Then, I will accept that and stipulate to it.

Trial Examiner HEKTOEN. Very good.

Mr. WOODS. Did you also see a document marked by the reporter for identification as Board's Exhibit No. 23?

(Thereupon, the document above referred to was marked "Board Exhibit 23" for identification.)

By Mr. WOODS:

Q. Which document bears the heading "National Labor Relations Act Memorandum for Southern Bell Tel. and Tel. Co." and dated at the bottom, "Revised April, 1937."—A. That is right. I saw it.

Mr. WOODS. I offer Board's Exhibit No. 23, together with the same stipulation made as was made in connection with Board's Exhibit No. 22.

Mr. MARION SMITH. We so stipulate.

Trial Examiner HEKTOEN. Does Mr. Branch join in that stipulation?

185 Mr. BRANCH. Yes, sir.

Trial Examiner HEKTOEN. That will be admitted in evidence as Board's Exhibit No. 23.

(Thereupon, document heretofore marked Board's Exhibit 23" for identification was received in evidence.)

By Mr. WOODS:

Q. Now, referring to Board's Exhibit No. 22 first, the January 1937, interpretation, at the time that that interpretation came out, can you state whether or not you recall that salaries of Association officers who are engaged in conferring with Management and for incidental time while they were meeting among themselves before and after conferences, to discuss presentation matters to the Management or disposition of matters that had already been presented to the Management, were paid for by the company.—A. The salaries and wages were; yes, sir.

Q. That is both before and after such joint conferences?—A. Yes, sir; that is correct.

Q. Up to the time of the issuance of the memorandum of January 1937, Board's Exhibit No. 22, had the Association made any payments to the Management for the office space used by the General Secretary?—A. No; we didn't have any. We didn't make any payments to them. Up to what time? Let's get the date.

Q. January 1/ 1937—not to mislead you—A. No, sir.

186 Q. The statement here is as follows: "Space for the exclusive full time-use of the Association cannot be provided by the Company without proper charges."—A. Yes, sir.

Q. And it continues: "And Association should be billed for Company office space used by the General Secretary for Association business."—A. I don't recall that.

Trial Examiner HEKTOEN. You don't recall whether payment for such facilities was made before January 1937, or not?

The WITNESS. No, sir; I don't recall whether it was or not.

By Mr. Woods:

Q. While you were acting as President of the Association up to January of 1937, did you have any office outside the offices of the Southern Bell Telephone and Telegraph Company?—A. No; not other than at home. I still retained New Orleans as my residence address and Atlanta was just the jumping-off place like any other place was. I retained my records at home.

Q. Where were the membership records of the Association kept before January 1937?—A. I don't recall; I think our former General Secretary better tell you that, "and that she can do it better than I can."

Q. When you came to Atlanta, where did you have your office?—A. I didn't have any. At the hotel, and just floated around on visits, and consultations and conferences with various Management representatives and had these Local meetings.

Q. You never had occasion to consult the Membership records of the Association before January 1937?—A. Not especially; I left practically all of that up to the General Secretary at that time who was very competent.

Q. Now, up until January of 1937, state what the practice was with respect to charges for long distance calls on the Association's business.—A. I know that any long distance calls that I placed, I paid for out of my own expense account. The policy, at the time, as I remember it, was that long distance calls of an Association nature, that were made incidental to a call that might be made for business purposes was approved. Now, what happened to any calls that might have been made by individual officers, or whether there were any made or not, I personally wouldn't be in a position to say.

Q. Mr. Weil, the last paragraph of Board's Exhibit 188 No. 22, the January 1937 interpretation states: "The Company will discuss with the Association officers the question of proper charges for collecting Association dues and the necessary procedure for making this effective." Refreshing your memory from that language can you state whether or not the bulletin headed "Wagner Bill interpretations" was discussed with you as an officer of the Association prior to the time that it was issued or proposed?—A. I would say the individual items in there were discussed from time to time. The whole thing was not dis-

cussed as one particular item, but the individual items, from time to time, were discussed, we discussed them between us:

Q. With Management?—A. With Management.

Q. And you recall no particular discussion of the issues in this entire bulletin?—A. No, sir; not as an entire bulletin. I think the first I saw that was when the whole came out and I got it as the other members did.

Q. During the period that you were negotiating with Management regarding these changes, do you recall whether or not you had the advice of any attorney?—A. No, sir; we never did, other than folks we knew, the legal profession personally. We had quite a few boys in our organization who were members of the Association who had studied law—one particular one I wouldn't hesitate to name at that time was Herbert Sturdevant, and we have quite a few of those boys. Such boys as that—we had quite a few of them that had studied law.

Q. The Association employed no attorney?—A. None whatsoever.

Q. Until June 12, 1937, has the Association ever paid the Company any monies for the cost of making dues deductions?—A. Until when?

Q. June 12, 1937?—A. No, we had not.

Q. Up until that same date, which is the date of your letter, June 12, Board's Exhibit 18, had the Association ever paid the Company any money for the use of Company premises for Local Meetings?—A. Not that I recall; no, sir.

Q. Up until that same date of June 12, 1937, had the Association used the Company's bulletin boards for posting strictly Association business notices?—A. We did.

Q. And was that practice discontinued after June 12; so far as you know?—A. I would say that it was, so far as I know.

190 Q. There may have been violations.—A. Again, I couldn't answer for 1,200 Exchanges where bulletin boards might exist. I do not know that instructions went out telling them not to use them.

Q. And the third paragraph of page 2 of Board's Exhibit No. 18 you referred to the fact that the General Executive Board had decided to set up an Association headquarters office and rented space in the Hurt Building in Atlanta, Georgia.—A. That is right.

Q. To refresh your memory I show you a document marked by the reporter as Board's Exhibit No. 24.

(Thereupon, the document above referred to was marked "Board's Exhibit No. 24" for identification.)

By Mr. Woods:

Q. Headed "This indenture," signed by representatives of the Company and representatives of the Association and ask you to state if you can recall having signed that document.

Mr. MARION SMITH. Give me the date, will you, please?

Mr. Woods. April 9, 1937.

(Witness examining the document in question.)

The WITNESS. That is right.

Mr. Woods. Mr. Examiner, I offer the exhibit.

Mr. MARION SMITH. I haven't seen it. That is a copy of the lease of that room, is it?

Mr. Woods. Yes, sir; I am sorry, I thought that you had seen it, Mr. Smith.

191 Mr. MARION SMITH. We have no objection. It is dated April 9.

Mr. Woods. Yes, sir.

Mr. BRANCH. No objection to it.

Trial Examiner HEKTOEN. It will be admitted in evidence.

(Document heretofore marked "Board's Exhibit 24" for identification was received in evidence.)

By Mr. Woods:

Q. Now, according to this document, Board's Exhibit No. 24, you were leasing certain premises in the Hurt Building for a period from April 1, 1937, to March 31, 1938?—A. That is right.

Q. At a rental, at an annual rental of \$84 per year?—A. That is right.

Q. Do you recall the payment of those rentals for the period of time that you occupied those premises?—A. I don't. I would have to refer to the Association's records on that as to that; I don't recall.

Q. Do you know of any other document with regard to the leasing of those premises besides this Board's Exhibit No. 24?—A. I don't recall it; there may have been.

Q. Your understanding is that the rental set forth there is the only rental paid for the premises?—A. It is my recollection that that is right.

Q. Were the officers of the Southern Bell Telephone and
192 Telegraph Company located in the Hurt Building in Atlanta, Georgia?—A. They are.

Q. Are those the General Offices of the Company?—A. General and Division.

Q. How many floors are occupied by the Company wholly?—A. Well, I used to know, but they have moved about in the past recently, the last few years that I can't tell you now.

Q. Are there any other Southern Bell Telephone and Telegraph Company offices, that is, offices of the Company on the 17th floor of that building?—A. There is.

Q. Do you know what the normal rentals are in the Hurt Building?—A. I haven't the slightest idea. I know this cubbyhole was not worth as much as we paid for it though.

Q. Did you or not know that the cheapest space that you could get in the Hurt Building at that time would cost you at least \$300 per year, at least?—A. I think that the Hurt Building would have given us this space that we had; it was like an elevator shaft.

Q. Now, can you answer my question, Mr. Weil?—A. No, sir. I answered your question. I don't know. I don't know what the rental is in the Hurt Building.

Q. You state in the third paragraph on page 2 of Board's 193 Exhibit No. 18, that is your letter of June 12, as follows: "It has been agreed that the Company cannot permit the use of its toll lines for Association business, except at full tariff rates." Do you know if less than the full tariff rates had been charged the Association before that time?—A. Now, that is similar to a question that I just answered; I don't know that toll lines were used other than by myself, and I don't know whether they were paid for at all.

Q. You continued to lease the property or the premises in the Hurt Building as Association offices or general headquarters up until November 1, 1937, did you not? To refresh your memory on that point, I show you a letter acknowledging the cancellation of the lease.—A. I will rely on the letter as that being correct; I don't remember the date.

Trial Examiner HEKTOEN. That means "yes," doesn't it?

The WITNESS. Yes, sir.

Mr. MARION SMITH. We are willing to stipulate that; we have a record of it ourselves, November 1 is the date they moved out.

Mr. WOODS. Let's state that stipulation then; it is stipulated between and among counsel that the Association occupies the premises in the Hurt Building as General Headquarters offices for the Association from April 1, 1937, down to November 1, 1937.

194 Mr. MARION SMITH. The lease stated that it was for a year, but it had a cancellation clause in it, and it was cancelled under that cancellation clause on that date and they moved from there, I am advised, to the Trust Company of Georgia Building.

Mr. WOODS. I will come to that in a moment.

Mr. BRANCH. Let me confer for just a moment. I think I prefer rather than this to be stipulated, I think I prefer for this letter of September 25 to go into the record showing the circumstances.

Mr. Woods. Then I will withdraw the suggested stipulation and in place thereof, I will offer certain documents for the record.

Trial Examiner HEKTOEN. Very well.

Mr. Woods. The first of which documents will be marked by the reporter as Board's Exhibit No. 25 for identification, and is a letter dated Atlanta, Georgia, September 25, 1937, addressed to Mr. J. E. Warren, President of the Company and signed by L. H. Weil, the witness.

(Thereupon, the document above referred to was marked "Board's Exhibit No. 25" for identification.)

Mr. Woods. And the second is a copy of a letter dated September 28, 1937, which I request to be marked as Board's Exhibit No. 26 for identification, addressed to Mr. L. H. Weil, President, Southern Association of Bell Telephone Employees and signed by J. E. Warren, President of the Company.

(Thereupon, the document above referred to was marked "Board's Exhibit No. 26" for identification.)

Mr. Woods. I offer those two documents in evidence.

Trial Examiner HEKTOEN. If there is no objection, they will be admitted in evidence as Board's Exhibits No. 25 and 26.

Mr. MARION SMITH. No objection.

Mr. BRANCH. No objection.

Trial Examiner HEKTOEN. They will be admitted in evidence.

(Documents heretofore marked "Board's Exhibits 25 and 26" for identification were received in evidence.)

Mr. MARION SMITH. Your Honor, we have found the letter of March 5, and there is a duplicate copy of Mr. Warren's reply of May 28, with the receipt of the reply endorsed by the Association's officers on the bottom, that constitutes the contract in the shape that it is. I would like to make copies of it and substitute the whole thing in place of it, instead of the originals, if I may.

Mr. Woods. I think Board's Exhibit 22 is already the lower part of the document. It makes no difference to me.

Mr. MARION SMITH. May I make a copy of Mr. Weil's letter to Mr. Warren of March 5?

196 Mr. Woods. Yes, sir; and put it in where we have reserved the space for it.

Trial Examiner HEKTOEN. Very well. That will be put in as Board's Exhibit No. 21.

Mr. Woods. All right.

By Mr. Woods:

Q. Mr. Weil, even after your letter of June 12, 1937, did the Association's Locals continue to meet on Company property?—

A. I imagine some of them did. I couldn't say that they did, because we were stressing the importance to them of holding the

meetings where possible, on private premises, either at their residences or in other halls, however, for me to answer you directly whether I know that they did or not, I don't.

Q. You don't know?—A. I do not know that they did hold them on the Company's premises or did not.

Q. In all of your annual reports to the General Assembly, you have stated that you had visited, if not all of the divisions in the Southern Bell territory almost all of them. Was that statement correct or not?—A. I visited practically all of them.

Q. And that was true in 1937 and 1938, was it not?—A. That is correct:

Q. And you attempted to attend Local meetings where-
197 ever possible?—A. No, I called meetings; I had called meetings when I went over the territory.

Q. When you called such meetings in 1937 or 1938, do you know that the majority of them were held on Company property?—A. That is right, those particular ones I attended were, some of them were held on the Company's premises and in some instances we held them in a private hall.

Q. When you held meetings in New Orleans, didn't you hold them on the Company's premises?—A. In some instances, yes, sir; and in some instances, we held them in hotel meeting rooms.

201 Mr. Woods. And as Board's Exhibit No. 36, I offer the general agreements between the Company and the Association executed July 30, 1940.

(Thereupon, the document above referred to was marked "Board's Exhibit 36" for identification.)

Trial Examiner HERTOES. And that is the one still in effect according to the allegations of the complaint, is that correct?

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CROSS-EXAMINATION

Q. So that during the time that you were serving as president of the Association, your position was plant practice supervisor?—A. Yes, sir.

Q. What did you supervise, Mr. Weil?—A. No individual at all. It was a title that was accorded to the individual responsible for the practices going to the proper employees who needed them in their work and to also interpret or clarify those particular instructions to those individuals who received them and didn't understand them in detail.

Q. You just said to distribute the practices—then, what are the practices that you refer to?—A. The practices and routine

and the instructions sent down from the General Headquarters Office of the Telephone Company, to the Divisions.

Q. That is, they are printed or written, is that correct?—A.

Yes, sir; they are printed for the Southern Bell Telephone and Telegraph Company's System as practices, routine instructions and—

Q. And what you, in reality, distributed, were pieces of paper, is that correct?—A. Yes, sir; printed practices and routines from headquarters.

Q. Did anybody report to you?—A. No one whatsoever.

Q. No one whatsoever?—A. No one whatsoever.

Q. Did you have the right to employ or discharge anybody?—A. Positively not.

Q. Were you over anybody in a supervisory capacity?—A. No, sir; I was not.

Q. The canvass for the fifty cent contributions was before the passage of the Wagner Act?—A. That is correct.

Q. The canvass for membership when these membership cards were signed, and the card authorizing the deduction of dues from pay was signed, that was after the Wagner Act was in?—A. Yes, sir; that is correct.

Q. That canvass was not on company time, was it?

By Mr. MARION SMITH:

Q. Was that solicitation for the signed membership cards on company time?—A. It was not.

Q. Had there ever been a canvass generally for signed membership before that time, Mr. Weil?—A. Not in my experience with the whole association.

Q. And so far as you know, that was the first time that the employee body was ever canvassed generally for membership in an Association?—A. That is correct.

Q. Did you or anyone else, to your knowledge, encounter any management interference, one way or the other, in connection with that campaign for membership?—A. None whatsoever.

Q. As a matter of fact, what do you know about a statement from Mr. Warren that was transmitted to the employees of the company before that canvass for membership took place? Do you know about that information that was carried to the employee body?—A. No; other than that was conveyed to me at my own particular headquarters office.

Q. Tell us about that, then, and what happened?—A. I, as a member of the Division Local in New Orleans, was told—let me see—repeat the question, please.

Q. Perhaps I can restate it to you more rapidly than having it read.

Trial Examiner HEKTOEN. Very good.

By Mr. MARION SMITH:

Q. What do you know about any announcements that were made in your presence, to you or to other employees, as to the company's attitude on the subject of the employees joining or not joining any particular organization or union?

Mr. WOODS. In what year?

Mr. MARION SMITH. I will eliminate the word "Suggestion."

By Mr. MARION SMITH:

Q. In the year 1935 and before the canvass for the signed cards for membership, just confine it to what is within your own knowledge?—A. Some time in July, my recollection is it was after the

Wagner Bill had gone into effect—I, of course, at that time, had been vice president of the old Association; and that particular job, at that time, didn't carry any more with it than an ordinary member, but in our particular headquarters and in our particular group, we were told by our immediate supervisor that the Wagner Act had been passed; that it had prohibited the company from supporting any employees' organization in any way whatever, and that the employees themselves certainly had the right to fill in or set up any type of bargaining agency which they desired. That was told directly to us by my immediate supervisors, and the other supervisors of the group in which I was employed.

Q. And that was in July?—A. That was some time in July, just immediately after the signing of the Wagner Bill.

Q. Now, in the canvass, the part that you took in the canvass, did you or not find that the employees generally understood that to be the company's attitude?—A. In what canvass was that?

Q. For the signed cards?—A. For the signed cards, that was definitely understood.

Q. Was there any effort on the part of the management, to your knowledge, to put any pressure on anyone to join the Association or to sign those cards?—A. There certainly was not.

Q. Did you, to your knowledge, encounter any interferences one way or the other from the management of the company in that regard?—A. None whatsoever.

Mr. MARION SMITH. I think that is all I am going to ask Mr. Weil.

By Mr. BRANCH:

Q. Mr. Weil, you were asked a good deal about the question of whether the constitution that was adopted and became effective on February 1, 1936, was an amendment or a new constitution.

Without undertaking to classify what it was, I want to get you to tell me what was done as to whether there was an amendment proposed to an existing constitution, or whether there was an entire instrument from the preamble to the very last clause in it prepared and submitted for adoption or rejection?—A. If I understand your question, that is in reference to the constitution drafted by this special committee?

Q. Yes, sir.—A. Of which I was chairman?

Q. Yes, sir.—A. This committee was called in to Atlanta to provide or to draft up some sort of rules to provide the machinery for the operation of an organization or bargaining agency to be, as we very definitely understood it, operated and controlled by the employee body themselves. We, in endeavoring to draft up what we had later referred to and contend now is the constitution of the present Association, we had, first of all, we recognize that we were just a bunch of laymen. We did not seek any legal advice. We had a copy of the Wagner Act, we felt like that we were capable of interpreting it sufficiently, to the extent that we could draft a constitution which would be within the law.

Mr. WOOD. I move to strike all of the witness' answer up to this point, on the ground that it is clearly not responsive to the question.

Mr. BRANCH. I would be the one that would have the right to object on the ground that it is not responsive. I think that it is fairly responsive. I asked him the specific question of whether it was an entire constitution that was submitted, and he is undertaking, as I understand it, to tell what was done, and I think that was fairly responsive.

Trial Examiner HEKTOEN. What is the question. What occurred at the special meeting, or what was done by the special committee at this meeting?

Mr. BRANCH. As to whether an entirely new constitution was gotten up and proposed for adoption, or whether there was just some amendment to an existing constitution, that is the question.

Trial Examiner HEKTOEN. Parts of the answer may be responsive. I think they may stand, but try to answer this question as it now stands, as directly as you can.

217 The WITNESS. I will do that, sir.

Trial Examiner HEKTOEN. All right.

The WITNESS. In drafting up this constitution, as I stated, we had a copy—

Trial Examiner HEKTOEN. Can't you put in an answer more directly than that? The question is was this a new constitution or was an old one amended? There are two alternatives, and you can answer it either way, can't you?

The WITNESS. My answer is that that was a new one.

Trial Examiner HEKTOEN. All right, proceed.

The WITNESS. Now, may I have the question read? I understood it to be how did we go about it.

Trial Examiner HEKTOEN. It was a rather long question, but the final answer that you gave was the desired answer, I believe.

The WITNESS. All right.

By Mr. BRANCH:

Q. For the present purpose, I show you here an instrument entitled on the very front of it "Southern Association of Bell Telephone Employees," with a symbol or device there, "Efficiency service, cooperation," and then, "Constitution and joint agreement between management and the employees' Association as to procedure amended by special session of the General Assembly, September 1935, and effective February 1, 1936." Now it starts on the inside: "Constitution of the Southern Association of Bell Telephone Employees," with the heading "Preamble," and then it covers a number of pages, and the very last provision in it, Article 18, is as follows:

"If any provision of this constitution is found to be invalid on account of conflicting with any state or national law, the remainder of this constitution shall not be affected thereby." Now, is that what was gotten up by this committee and submitted for ratification or rejection?—A. It was.

Q. While I am on that, I call attention again to that statement on the flyleaf or cover, "Effective February 1, 1936," did you understand that applied to the joint agreement as well as to the constitution?—A. I did.

Mr. BRANCH. Did you want to see these?

Trial Examiner HEKTOEN. No, sir.

Mr. BRANCH. I thought you wanted to see them.

Trial Examiner HEKTOEN. No, sir.

Mr. BRANCH. Very well.

By Mr. BRANCH:

Q. Now, what you actually did then, as I understand it, was to write an entirely new instrument, which was to be a constitution, if adopted?—A. Correct.

Q. And not to undertake to alter or amend, as attorneys usually understood, some existing instrument?—A. That is correct.

Q. Now, suppose you tell just the machinery that was gone through in drafting this instrument that was proposed as a constitution? Just go on and tell it as briefly as you can?—A. This committee undertook, we had several constitutions from various other organizations, in our possession, and we also had

recommendations of changes from our field people who had sent them in as their suggested changes, to be incorporated in the new organization. We also had the one constitution of the old Association. We took all of those constitutions and reviewed them, and took from them certain sections, as I cut them out and pasted them in chronological order to agree with the changes that had been made in it to us, a part of the present one, the constitution of the old Association, and then sent that down, and the result was the constitution that we submitted to the General Assembly for ratification by the employee body.

Q. Who did that that you have just related?—A. What is that?

Q. Who was it that did that work?—A. This particular committee, the special committee, that met immediately prior to the special session of the General Assembly.

220 Q. In August of 1935?—A. Yes, sir; in August of 1935.

Q. How many members were on that committee?—A. My recollection is there were five.

Q. Five?—A. Four or five; I don't recall the exact number; I will have to refer to the records.

Q. Was Mr. Askew a member of it?—A. No, sir; he was not.

Q. In that connection, I will ask you if Mr. Askew, on any occasions, undertook to participate in the deliberations of these of those committees?—A. He did upon the convening of the committee. Mr. Askew came into the committee meeting with a folder of some papers, and with the feeling that, evidently with the feeling that he was going to participate in the meeting, but it was the committee's opinion, however, that he should not be permitted to participate in the meeting, and, I, having been designated to act for the committee, had to ask him to excuse himself and leave the committee meeting. He later on returned to the committee meeting, and I had to ask him again to leave.

Q. Did Mr. Askew express any different view about what should be done as to whether there should be a reorganization or merely some revision of the old organization?—A. It was the committee's understanding that Mr. Askew's view about it was to the extent that all that was necessary to be done was to provide a means of meeting the financial needs of the old Association

221 and to continue to operate it as such. It was my consensus of opinion and that of the committee that we should not do any such thing as that, that we should attempt, make every effort to establish the means for providing a new organization, one that was the set-up that we felt like would be much more effective for bargaining purposes and certainly independent of any financial support or domination from any source. We proceeded to draft this constitution on that basis.

Q. About how many days were you at work on the drafting of this instrument that was proposed as a constitution?—A. Do you mean twenty-four hour days, Mr. Branch?

Q. Well, I mean—A. We put in about three of those kind, with very little sleep.

Q. Where did you meet?—A. We met in a room in the Hurt Building, together with a lot of preliminary work done over in the hotel, in our own hotel rooms.

Q. Now, that Assembly that convened right after that, was this instrument submitted to that Assembly?—A. It was, in its entirety.

Q. Where did the Assembly meet?—A. In the Piedmont Hotel.

Q. Did any representative of the management participate in any way at all in the outlining of this constitution?—

A. No, sir.

Q. Was there any suggestion from anybody connected with the management, as to anything to be incorporated in it?—A. No, sir.

Q. Was there any approval of any representatives of the management asked or sought on this constitution?—A. No, sir.

Q. Now, was the ratification of this constitution sought—what was the machinery for obtaining the approval or disapproval of this constitution?—A. In drafting the constitution—

Q. I mean after it was laid before this—A. I think that I will have to bring this in to answer your question.

Q. All right.—A. In drafting the constitution, the committee gave very definite consideration to the machinery that would be used in order to get it back to the employee body, and there was no question or doubt in our minds but what we would use the structure of the old organization. We saw no reason why we were not able to do that. That accounts for the references that went out in the later publications and the circularization to the employee body of the references to amendments, changes and revisions, and certainly, to the constituting—to constitute that, they were addressed to the members and to the Locals, and we used the structure of the old organization in order to get this constitution down through to the employee body, who was expected and hoped would become members of the new Association.

Q. In sending that out, then, as I understand it, it was sent out through the Local offices of the old Association?—A. That is correct.

Q. And the expense of sending that out, how was it borne?—A. By the Association.

Q. From what fund?—A. From the fund accumulated from the canvass, or the funds that remained from the accumulation of the canvass for the fifty cent contributions, together, by that time—

Q. You don't mean expense; you mean fund?—A. The funds that were derived from dues that were then being assessed against the members.

Q. While we are on that subject, do you yourself know anything about the refund of those contributions?—A. Mr. Examiner, is it too late for me to clarify a previous answer, which was misunderstood by me from a date standpoint? The answer to the question immediately preceding this one?

Trial Examiner HEKTOEN. If it was given under a misapprehension, of course, you may clarify it.

The WITNESS. Yes.

224 Trial Examiner HEKTOEN. Tell us what it is you misapprehended?

The WITNESS. It is the question immediately preceding this one that Mr. Branch asked.

Trial Examiner HEKTOEN. Read the question.

(Question read.)

The WITNESS. The expense of actually sending out those constitutions was derived from the fifty cent contribution fund. I misinterpreted the question that I was thinking of the voting on the constitution. At that time, we had started to collect dues. This particular expense was borne from the fifty cent contribution fund.

Trial Examiner HEKTOEN. Now, what is the pending question?

(Question read.)

A. Yes; I do.

Q. Is it not true that those contributions were refunded, paid back to the contributors by the Association?—A. They were. They were refunded to each individual who had originally contributed.

Q. Was that done pursuant to a resolution that was passed by the General Assembly?—A. It was, instructed the General Finance Committee to refund the fifty cent contributions at such time as the financial affairs of the Association would permit.

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227 Mr. Woods. Mr. Examiner, I offer to stipulate that the fifty cent donations were returned to the employees making the contributions during the month of December, 1936, pursuant to the resolution adopted by the February General Assembly in that year.

Mr. BRANCH. All right, sir.

Trial Examiner HEKTOEN. Is that stipulation satisfactory to the parties?

Mr. BRANCH. Yes, sir.

Mr. MARION SMITH. I assume it means returned by the Association?

Mr. WOODS. Returned by the Association, yes.

Mr. BRANCH. The fund from which it returned it—maybe you want to stipulate this—was raised from the membership dues.

Mr. WOODS. That is correct. That is my understanding.

By Mr. BRANCH:

Q. I want to come back a minute to this preliminary meeting of this committee to formulate the constitution or to formulate plans for this organization. Do you recall whether or not Mr. Askew wanted to designate a committee of his own choosing or not?—

A. Mr. Askew's idea of appointing that committee was of having a committee to function, as that one did—was that the General Departmental officers of the old Association should come in and comprise that committee. There was an objection raised to that in that the people who were to later decide on who that committee should be requested that they be permitted to vote on who they should send to that committee; that they designate the individual. They were not satisfied with General Departmental officers coming in to serve on that committee.

Q. When you speak of General Departmental officers, do you mean General Departmental officers of the old Association?—A. Of the old Association.

Q. Not of the company?—A. That's right, of the old Association.

Q. Then, what was done?—A. It was then left to the members of the old General Assembly, and they designated certain individuals to come into that committee meeting. I was one of them who was not a General Departmental Officer, who was designated to come in for the Plant Department, and the Traffic designated a lady from Louisville, Kentucky, Miss Genevieve Moore, who was not a departmental officer, and one or two others. I don't recall who they were.

Q. The net result was that Mr. Askew was not permitted to designate the committee, but it was done by the employees?—A.

By the members, by the employee body or by the members of the General Assembly; the old structure. They designated the individuals who were to come in and form that committee.

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Q. Mr. Weil, by your Exhibit 18, which was a letter dated August 28, 1936, "To all Division Chairmen, copy to all Local Chairmen," reference was made to some bargaining that had been going on. Will you read that and refresh your recollection [handing paper to witness]?

Mr. WOODS. Mr. Examiner, so that the record may be clear, I think Mr. Branch is actually referring to Board's Exhibit 17.

Trial Examiner HEKTOEN. Yes.

Mr. BRANCH. Change it, then, to the 17th.

232 Q. Will you tell what bargaining had been going on, that was referred to in that letter?—A. Yes. At our meeting of the General Assembly in February, 1936, certain requests were made of management as to certain salary treatment, and working conditions, the granting of that request as a whole—that particular request was not granted as a whole, so that the general assembly, or the general department board, rather than turned it over to the General Executive Board to continue negotiations. Those negotiations were continued with the management, with the result that on this particular day a meeting was arranged with management, and this request, which had been continued from the previous General Assembly, had been granted.

Q. It is stated in here that "We are advised that with the adoption of the proposed plan, approximately 4000 employees would receive immediate pay increases, and others would receive the full amount of increases in the future, which would have the effect of adding between \$400,000 and \$450,000 to the present annual payroll of the company." Was that statement correct?—A. Yes, as near as we could estimate it, it was; it was affecting traffic and plant, the scheduled portions.

Q. Well, that letter purports to be from the General Executive Board, naming eight people, you being named as Chairman and the last name being C. W. Dennis, General Office what, representative?—A. That is right, representative from the General Office.

233 Q. To what extent had negotiations been going on? Was it over a period of—I mean, were there various meetings between the board and the management?—A. No; there wasn't any more meetings, any more meetings with management held, other than the conference I held with them through the delegated authority from the General Board, the General Executive Board. I was delegated, with authority, to continue such negotiations with management, and to continue the presentation of the various reasons why we still felt that that request should be granted, and at such times as I felt like negotiations were at a standstill; that I could not come to any agreement with management, then, I was to notify the General Executive Board to the effect, to that effect, for such action that they deemed necessary. I was able to reach an agreement with management and called the General Executive Board into session to meet with management as outlined to them in the letter which you have there.

Q. During the time that you were president of this association, did the Association have various matters, grievances and other matters affecting the employees, to handle with the management?—A. Almost continuously.

Q. Well, did the Association negotiate and bargain with the management?—A. Most definitely so.

Q. Was that just an occasional thing, or was it frequent, very frequent?—A. It was quite frequent in the early stages, and the status in the new organization, and continued for several years thereafter; individual grievances as well as groups.

Q. I want to ask you whether or not, as far as you know, during the whole time that you were president of the Association, the Association was dominated in any way by the company?

Mr. Woods. I object to that as calling for a legal conclusion of the witness, that is wholly irrelevant and immaterial.

Mr. Branch. I will ask it in this form, so that the Examiner can rule on it.

By Mr. Branch:

Q. Do you know of any effort on the part of the company during that time to dominate and control the Association.

Mr. Branch. May I ask that question?

(No response.)

Q. All right, you may answer it.—A. I do not.

Q. With the exception of the September 3, 1935 agreement, they all became effective on the date of signature?—A. That is correct. That is my recollection of it.

Q. I want to make one, I hope last, effort to see about the way this Constitution was handled in 1935. I show you here what is labeled "Copy of Constitution, copy of working Constitution used by members of Special General Assembly in 1935," with a lot of pencil notations on it. Did the members of the General Assembly in August 1935, have working copies like this one I show you?—A. I think they did. Yes, they did. That was the working copy. It was typed in that manner, so they could make any corrections or notations on the side.

Q. With a very wide margin?—A. With a wide margin so they could make corrections in those particular paragraphs.

Q. I show you another document labeled "Copy of Constitution submitted to General Assembly in 1935." Was

it sent out in that form, just as I show you?—A. This last one; yes. This has the same changes as this [indicating].

Q. And it starts with the preamble and runs to "special article," and just above that "Article XVIII"?—A. That is correct.

264 Q. Now, if I may use this and refer to it as Board's exhibit 16, I want to ask you to look at Section 3 under the heading, "Amendments," "Amendment No. 1 submitted by General Executive Board, purporting to amend Article IX, Section 1," and at the bottom of it "Amendment Adopted," and it has 31 amendments that were acted on, some adopted, and some of which were rejected. Is that or not the usual and customary way that amendments are acted on?—A. It was.

Q. Now, when those are sent out to the Locals for ratification or rejection, is it entirely new, I mean, is there an entire Constitution sent, or is it sent merely by the amendments, merely the amendments as shown in the minutes?—A. Only those amendments adopted by the General Assembly are sent out to the field for ratification.

269 Trial Examiner HEKTOEN. I have one question, I think; you testified early in your testimony yesterday that during the existence of this small committee and before the General Assembly, that the small committee had occasion to meet on one occasion with Mr. Dumas, is that right?

The WITNESS. That is correct.

By Trial Examiner HEKTOEN:

Q. And that you submitted to him or got an explanation or opinion from him on what?—A. On the articles of agreement.

270 Q. Are either of those, or is any of that here now, that you showed Mr. Dumas?—A. The articles of agreement we were working on at that time.

Q. Which of these two exhibits, is it?—A. Neither one of those; they were the articles of agreement, and they had nothing to do with this constitution.

Q. And they had nothing to do with this constitution?—A. No, sir; nothing whatever.

Q. Oh, I see. Then the constitution or anything concerning it was not spoken about to Mr. Dumas by your committee?—A. It was not, sir.

Mrs. JANE H. WILKES, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Woods:

271 Q. Please state your name for the record?—A. Mrs. Jane H. Wilkes.

Q. Are you an employee of the Southern Bell Telephone and Telegraph Company?—A. Yes, sir; I am.

Q. For how long have you been an employee?—A. It will be fourteen years the 1st of April, this year.

Q. What is your present position?—A. I am personnel supervisor.

Q. How long have you held that position with the company, Mrs. Wilkes?—A. Since January 1, 1940.

Q. And what position did you occupy before that time?—A. I was secretary to the general commercial manager and the chief engineer.

Q. How long have you been in that position?—A. Since 1934.

Q. What are your present duties as personnel supervisor?—A. Now, that is going to be pretty hard to define. The personnel department, of course, is set up for the good of the telephone employees—

Q. I realize that, but, Mrs. Wilkes, what I am trying to find out is what your duties are as personnel supervisor?

* * *

272 The WITNESS. I might then say that my duties are those assigned to me by Mr. J. S. Kerr.

By Mr. Woods:

Q. And what are those duties?—A. They are working for and with the women of the Southern Bell Telephone and Telegraph Company.

Q. On personnel matters?—A. Personnel matters, helpful improvement matters, study groups of various kinds; self-development courses, and any activities that the girls might enter into, I give them what help I can.

Q. You go throughout the entire Southern Bell Telephone and Telegraph Company's system, do you not?—A. Yes, sir.

Q. When you travel into different towns where the company has an exchange, you call the girls together and explain the different proposals to them for self-help courses and matters of that kind?—A. Yes, sir.

273 Q. In the course of a year, in traveling around in that manner, would you say that you contact a major percentage of the women employees of the Southern Bell Telephone and Telegraph Company?—A. I would.

Q. Do you also listen to their personal and business problems and give them advice on those things?—A. I listen to them.

Q. But you do not give them advice?—A. I do not.

Q. How long have you been a member of the Association?—

A. I am not a member of the Association.

Q. How long were you a member of the Association?—A. I became—now, I don't know when I became a member; I will say around 1928 up until 1939.

Q. And you resigned in 1939?—A. Yes, sir.

Q. I believe when we were talking the other day, it appeared that you had resigned sometime in July of 1939, is that correct?—

A. It possibly was later than that.

Q. You at least resigned your office as vice-president and general secretary at that time, did you not?—A. I did.

Q. But you retained your membership in the Association for some time after that, is that correct?—A. That is right.

Q. Do you recall about when you resigned your membership?—A. I don't know the exact date, but I resigned the latter part of 1939.

Q. Was your resignation because of your promotion to your present position?—A. That is right.

Q. Mrs. Wilkes, I show you a letter marked by the Reporter for identification as Board's Exhibit No. 37.

(The document referred to was marked "Board's Exhibit No. 37," for identification.)

By Mr. Woods:

Q. Addressed "To all Local Chairmen," bearing the date of January 25, 1936, and signed by yourself, and I ask you to state if you remember this letter, remember having written this letter?—A. Yes, sir.

Mr. Woods. Mr. Examiner, I offer the letter as Board's Exhibit No. 37.

Mr. MARION SMITH. It has not been offered yet. I thought it had.

Mr. Woods. No, sir; it was just identified.

Mr. MARION SMITH. We have no objection to it.

Mr. Woods. Do you know the one that I am referring to?

Mr. BRANCH. Yes; I have a copy here.

Trial Examiner HEKTOEN. Do you have any objection?

275 Mr. BRANCH. No, no objection.

Trial Examiner HEKTOEN. It will be received, without objection.

(The document heretofore marked "Board's Exhibit No. 37," for identification, was received in evidence.)

By Mr. Woods:

Q. In the first paragraph of Board's Exhibit No. 37, Mrs. Wilkes, you stated: "The proposed changes in the constitution, copy

of which was furnished your Local last October, needed, in accordance with Article XVI of the present constitution, ratification 'By a majority vote of two-thirds of the Locals.' Since there are 354 Locals in our Association, this necessitated an affirmative vote from 236." I will ask you to state in connection with that statement to what constitution were you referring when you said "Present constitution"?—A. I was referring to the constitution under which the old organization had operated.

Q. Was the organization which you had at the time of the writing of this letter, that is, on January 25, 1936, whether you called it old or new or *intermin*, or in between, functioning under that constitution?—A. We might say that we were illegally functioning; we were using that machinery that was set up, looking towards the organization that was then in progress.

Q. And, as a matter of fact, you were functioning under the provisions of the constitution of the old Association?—A. Not legally.

Q. But, Mrs. Wilkes, whether you were operating under it legally or illegally, that was the machinery that you were using for action?—A. It was the machinery of the old organization; yes, sir.

Q. And when you referred to the present constitution, you were referring to the constitution of the old Association—when you said "In accordance with Article XVI of the present constitution, ratification," and so forth?—A. Yes, sir.

Q. And the concluding portion of that first sentence, you say "ratification 'By a majority vote of two-thirds of the Locals'."—you were quoting there from the 1934 constitution, were you not?—A. I can't say definitely there, Mr. Woods.

Q. And in your next sentence, you state: "Since there are 354 Locals in our Association, this necessitated an affirmative vote from 236." Were you referring there to the Locals of the old Association?—A. We were referring to that old machinery.

Q. Perhaps, Mrs. Wilkes, you can tell me why you made no distinction between the old and the new?—A. Because we did not believe that we were committing a crime at the time we set up the new organization to function under the old machinery.

Q. Now, Mrs. Wilkes, to leave this exhibit for a moment and get your record straight with the Association, when did you first become an officer of the Association?—A. In 1932.

Q. In 1932?—A. Yes.

Q. And to what office were you elected then?—A. I was elected as chairman of the general office Local.

Q. What?—A. The General Office Local.

Q. And, thereafter, were you—will you state briefly what offices you have held in the Association?—A. That was in 1931, and then in 1934, I was appointed, subject to the approval of the membership, as General Secretary. I held that office until 1935, when we reorganized, and at that time, I was elected as General Secretary-Treasurer of the new organization, and I served in that capacity in 1936 and 1937, and I believe I went in as vice president, Treasurer, in 1938.

Q. Are you sure that you were elected at the time of the 279 August special session of the General Assembly?—A. I was elected at the following—

Q. February?—A. Yes; when the constitution became ratified, establishing the office of General Secretary-Treasurer.

Q. But so far as the 1935 special session of the General Assembly was concerned, you functioned there as a result of your appointment there in 1934, did you not?—A. I served in the temporary capacity, I might say.

Q. From what source did you derive your authority to function in the special session of August 1935?—A. Well, if you got down to brass tacks on the thing, I don't suppose I had any authority.

Q. Well, let me put it this way: Where did you think that you derived your authority?—A. I thought I derived that authority by having been elected by the employee body.

Q. At what time?—A. Well, I was still acting. I acted in the capacity as General Secretary after we considered the old order out, but I realized that I didn't have any authority.

Q. You realized that at the time?—A. Yes, sir.

Q. And it is not now for the first time, but that was back in 1935?—A. Yes, sir.

280 Q. Whatever action you took you did so by virtue of an office held by an election held in 1935, in the General Assembly?—A. By virtue of not having thrown the machinery of that organization out the window.

300 Q. Now, in general, Mrs. Wilkes, would you say that you would subscribe to the statements of Mr. Weil on the stand with reference to the fact that the organization being set up during the Fall and Winter of 1935 was an entirely new organization?—A. Yes, sir.

Q. And you adopt so much of his testimony as followed that line?—A. That that was our intent; yes, sir.

Q. Now, I show you a letter dated October 1, 1935, which is in evidence as Board's Exhibit No. 13, signed by yourself,

310 Jane H. Wilkes, and I direct your attention particularly to the first full paragraph on page 2, wherein you stated as follows—

Trial Examiner HEKTOEN. Suppose you just let her read it.

By Mr. Woods:

Q. I refer to the first three sentences, had you read them?—A. Yes, sir.

Q. Will you explain for the Examiner why it was that you told all of the employees by signing that new application form they were not making a new application for membership?—A. I can only explain to you, Mr. Examiner, to the effect that we were telephone men and women trying to set up an independent organization that we thought was in accordance with the law. I did not profess to write it in any legal terms; I knew what we wanted, and I knew what we intended to do, and I knew what we thought we were doing.

Q. Mrs. Wilkes, perhaps, to reassure you, let's assume for the moment that what you set up was a completely legal organization. Now, all I am trying to find out from you is why you assured the members that by signing the new application form, as you phrased it here: "The new application form is not to be considered as a new application for membership." Were you trying to tell
311 the employees in your effort to form a legal organization that the new organization was the same as the old?—A. No, sir.

Q. Then why did you say that their application cards should not be considered as a new application for membership? Did you mean those words, or not?—A. No, sir; I did not mean them.

Q. You didn't mean what you said then?—A. No, sir.

Q. Is that the only explanation that you want to give?—A. The only explanation I have to give on that is that if you will take those letters, the ones that you have as exhibits, they are contradictory, they contradict themselves throughout, and it was because I had no experience in writing letters, because I wrote them in a hurry, and because I knew so well what we were trying to do, and I knew that the employees themselves knew what we were trying to do, and I did not go into the technical end of it, because I didn't know the technical side of it.

Q. Well, I don't see anything technical about this.—A. All right, you have a technicality right there that reverses itself; this says: "I hereby apply for membership in the Southern Association of Bell Telephone Employees," and yet I say in that same letter that it was a continuing membership, and both of those statements can't be right.

312 Q. Will you state whether or not you knew applicants for membership in the new association had to be approved in accordance with the constitution of the Association before they became members?—A. I don't know what the provisions of the Constitution were then. I can't say. I know up until that time it had not been followed. I don't know up until the time I got out whether that was followed or not.

Q. Do you or not know that an application for membership must be accepted by the Association Local for membership, before he can be admitted?—A. I know that the Constitution used to so state, but I don't know whether Locals followed that provision or not.

Q. At the time that you were Secretary and Treasurer, you knew that the Constitution so stated, did you not?—A. Yes, sir.

Q. In your own case, did you sign a new application form for membership?—A. I did.

Q. Was your new application passed on by your Local?—A. Not to my certain knowledge. I was not at the meeting.

Q. And, at least insofar as your own application was concerned, you don't know whether it has ever been approved by the Local?—A. No, sir.

321

CROSS-EXAMINATION

* * *

323 Q. Mrs. Wilkes, were you present in July, I think it was July, July 16, 1935, at a conference that Mr. Warren held in his office about the Wagner Act?—A. When he had the State Departmental heads here?

Q. Yes, sir.—A. Yes, sir; I was present.

324 Q. What capacity were you there?—A. I was there as an executive of the Association, as General Secretary at that time.

Q. You were there as General Secretary of the Association?—A. Yes, sir.

Q. Without burdening us with the full names, tell us what group of men and women were present, if there were any women present besides you?—A. Well, there were the executive officers of the company, that is, the General Department Heads here in Atlanta, and the four representatives of the Departmental Heads from each Division.

Q. That would be from eight divisions?—A. Yes, sir; from eight divisions.

Q. That would be 24, wouldn't it—multiplying it?—A. Yes, sir; I believe that would be 24.

Q. From the Divisions?—A. Yes, sir; and, of course, the General Departmental Heads here in Atlanta would be four, and from the various inter-departments here in Atlanta.

Q. That would be thirty-two instead of twenty-four, as I said a moment ago—my arithmetic, mentally, was off?—A. Yes, sir.

Q. You were there as general secretary of the Association?—A. Yes, sir, and Mr. Askew as the president of the Association.

325 Q. Now, who called that conference?—A. Mr. Warren, as I understand it.

Q. Did he make a talk to you?—A. Yes, sir.

Q. What did he talk about?—A. He talked about what the conference had been called for, a discussion of the Wagner Relations Act.

Q. The Wagner Labor Relations Act?—A. Yes, sir.

Q. Did he or not discuss what the company's attitude would be towards that?—A. He very definitely did.

Q. Now, tell me your recollection of the substance of what he said on that occasion, as you recall it?—A. Well, as I recall the meeting, he read in most part, the Wagner Labor Relations Act to that group, and he, of course, laid more stress on that part that said that the company must cease and desist in the giving of any assistance that they had been rendering to the Association, both financially and morally, and in any other way, and that he as president of the company, he was saying that the company was determined to follow that law to the letter, and that by the presence of the officers of the Association, he was, therefore, giving official notice to the Association that that was being done, and that he would expect us to carry that down the line—that from a management standpoint, it would be carried down the lines in the management organization.

326 Q. Now, what instructions, if any, did he give his own executives as to the company's attitude toward the rights of the employees under that Wagner Act?—A. As to what?

Q. As to the rights of the employees as to the Wagner Act?—A. He did not know what they would do, but he said that they had a perfect right to do anything that they wanted to.

Q. Who; the employees?—A. The employees.

Q. He did instruct them that the employees had a right to do anything that they wanted to?—A. Yes, sir.

Q. What did he say to the Division Chiefs about giving directions to their subordinates on the subject?—A. I think, Mr. Smith, that he instructed those men to go back, and call meetings within their division and the district people, and say to them that they, in turn, were to hand that down, and I also think that he told them—now, I don't know whether it was given to them at that meeting or not—

Mr. Woods. Just a moment, please. I think that we should have the witness' best recollection of these matters instead of what she thinks.

Mr. MARION SMITH. I am sure that when she uses that statement, she means that it is her best recollection.

327 By Mr. MARION SMITH:

Q. That is your best recollection, is it?—A. Yes, sir; that is my best recollection of it.

Q. Just tell us the best recollection as it left an impression on your mind as to what they were to do?—A. And that a copy of the Wagner Act was either given to them at that meeting or was furnished to them later.

Q. Was or not the substance of the instructions that the company was to keep hands off?—A. Yes, sir; very definitely.

Q. And that they were to see that their subordinate carried it out, is that correct?—A. Yes, sir; and that he was notifying us to that effect.

Q. Have you known of any change in the policy of the company in that respect, in respect to that matter, since that time?—A. No, sir.

Q. So far as it comes within your knowledge, has that attitude and policy continued on the part of the company up to the present time?—A. It has, definitely.

Q. Do you think that you would or would not have known if it had been changed?—A. It—

Mr. Woods. I object to that question, in that form, whether she would have known if any change had taken place.

328 Mr. MARION SMITH. I think that is an appropriate question, considering the type of witness this lady is.

Trial Examiner HEKTOEN. She may answer it, if she does know. Do you know of any change?

The WITNESS. No, sir, I do not know that it has been changed.

Trial Examiner HEKTOEN. You would know, however, but you do not know if it has been changed?

The WITNESS. I believe if it had been changed, it would have gotten to the officers of the Association.

Trial Examiner HEKTOEN. There is another question.

Mr. MARION SMITH. The point about it is that I may ask a similar question along that line to other witnesses, because we have a proposition of proving a universal negative here, and we have to do that instead of calling 21,000 employees as witnesses.

Trial Examiner HEKTOEN. She says that she thinks she would know that the policy is.

Mr. MARION SMITH. All right, she is with you.

330

REDIRECT EXAMINATION

336 Q. Now in answer to certain questions by Mr. Smith, you stated that Mr. Warren, in July of 1935, called a meeting of all executives on the staff in Atlanta, which you attended, is that correct?—A. Yes, as an Associate representative.

Q. And I believe Mr. Askew testified that yourself and him and Mr. Fuller, a Mr. Fuller, attended that meeting, is that correct?—A. I don't recall Mr. Fuller myself.

Q. What other representatives of the Association, besides yourself and Mr. Askew, attended, do you recall?—A. I recall none other except Mr. Askew and myself.

Q. How were you invited to go to that meeting?—A. I was invited, I can't say by what official of the Company, because I do not recall, but I was invited to attend that meeting where Mr. Warren delivered his discussion and requirements regarding the Wagner Act.

Q. You don't remember who invited you?—A. No, I don't; no, sir.

337 Q. Was it Mr. Dumas?—A. No. It probably was Mr. Dumas, but I can't say definitely.

Q. Now, you stated that Mr. Warren made certain statements at that meeting. Were those statements made to the executives, or to you all, or to both of you; both groups I mean?—A. It was my understanding, Mr. Woods, that we were invited as Association officers to attend that meeting so we might get Mr. Warren's instructions regarding the Company's attitude toward the Wagner Labor Relations Act.

Q. Do you recall whether or not Mr. Warren repeated the interpretations of the Act, which are included in the Company's Wagner Act interpretations of July 20, 1935?—A. You mean that the Company got out?

Q. Yes.—A. Yes.

Q. He did?—A. Yes.

Q. I show you a copy of Board's Exhibit 9, and ask you to state whether or not these are the instructions you understand I am referring to: [handing paper to witness]?—A. [Examining.] Yes, sir; that was part of the instructions.

Q. Is there anything on Board's Exhibit 9, which indicates that the employees are free to join any labor organization they
338 choose?—A. No, there is not there; but I say that was part of the instructions.

Q. Board's Exhibit 9 refers only to the Association, does it not, and practices which, under the interpretation of the

Wagner Act, may no longer continue?—A. Now, I can't answer that, until I re-read the whole thing.

Q. Well, re-read it.—A. May I ask the question again, Mr. Woods, please, sir.

Trial Examiner HEKTOEN. Will you read the question?

(Question read.)

The WITNESS. I don't say that this refers entirely to the Association; no, sir.

Q. Let me put the question to you in this fashion; then, Mrs. Wilkes: did Mr. Warren, in that meeting in July, tell you that the Association was dissolved?—A. He did not.

Q. Did he say the Company was disestablishing it?—A. He did not. He said that the Company was withdrawing all financial and all moral support, and I imagine from that; if you don't have any money to go on—

Q. I don't want your imagination in the record.—A. You have to get that to get the facts.

Q. Wait a minute, Mrs. Wilkes. All I want is what Mr. Warren said?—A. All right.

Q. Now, your imagination is not relevant evidence. Now, you said that he told you that the Company was withdrawing all financial support—

Mr. MARION SMITH. Let her say what he said.

Mr. Woods. She said: "I imagine—"

Trial Examiner HEKTOEN. She did say "I imagine."

Mr. MARION SMITH. But let her now say what he said.

By Mr. Woods:

Q. Now, continue with what he said.—A. Mr. Warren said that the Company was determined to abide by the provisions of the Wagner Labor Relations Act to the letter, and that they were withdrawing all financial, all moral, or any other kind of support from the Association, and that he was bringing it into that body that morning, bringing that body in to give those instructions. Now, you asked me if he said we would be dissolved, and I say to take money away from you dissolves anything.

Q. Well, did he say that you would be dissolved?—A. He did not.

Q. Now, what else did he say at that conference with respect to previous bargaining between the Company and the Association?—A. I don't recall anything having been said at that meeting on that.

Q. Did he make any reference whatever to the history of the Association?—A. Not that I recall.

Q. Suppose you state, all in one place in the record, just exactly what you recall Mr. Warren having said; all in one

place.—A. I understand that I had just done that just a moment ago.

Q. Well, do it over again, please.—A. All right.

Q. Just as completely as you can recall it.—A. I recall that Mr. Warren read to the Management representatives and to the employe representatives at that meeting the provisions of the Wagner Labor Relations Act. I recall that he stressed in detail that section which says that the Company must cease and desist from any support whatsoever, and that the employes were to do whatever they saw fit to do, and he was giving instructions to the Management representatives that the Company was to abide by the provisions of that law in detail, and that the Association representatives, officers, attending that meeting, were hereby advised, and that he expected this to go down through the line of the Management representatives, through the Management representatives, and through the Association, the lines of the Association through the Association officers.

Q. Then, he also asked you all to announce to your membership what the Company's views were; is that right?—

A. He did not ask us. He said he expected us to do that.

Q. Did you do that?—A. This was sent out.

Q. What was sent out?—A. This Exhibit 9.

Q. Well, did you all send it out, or did the Company send it out?—A. The Association sent it out.

Q. The Association sent out Board's Exhibit 9, the interpretations of the Wagner Act?—A. I will have—it is my impression that they did, Mr. Woods.

Q. Well, who drafted it, then?—A. It was already drafted by the Company, but the Association could send that out, and I believe did, as instructions received from the Management.

Q. Then, in other words, the Association's interpretation of the effect of the Wagner Act was entirely made by the Company's attorney, is that right?—A. Not entirely made. We had our own idea.

Q. Well, that is the only thing you sent out in writing wasn't it?—A. No, I don't believe it is.

Q. Interpreting the Wagner Act at that time in July 1935?—A. I think we have had in evidence here letters that were sent out by Mr. Askew. I don't recall the contents of them.

Q. Interpreting the Wagner Act?—A. I say, I don't recall the contents of them, but I know they were on the Wagner Act?

Q. Well, at any rate, Mrs. Wilkes, your testimony is that that particular document, Board's Exhibit No. 9, interpretations of the Wagner Act, provided by the Company, was the document

interpreting the Wagner Act upon which the Association relied in the course of its alleged re-organization?—A. No; I wouldn't say it was the only thing that we relied on, Mr. Woods. I merely say I know it was sent out, and it was sent out to our people as instructions as to what the Company would and would not do.

Q. And you said also, didn't you, that the Association sent it out?—A. Yes; I did.

* * *

346 It is stipulated by and between counsel that prior to some time in April 1937, but subsequent to the General Assembly of February 1937, the Company discontinued the practice of paying the salary of members of the General Assembly while engaged in necessary preparation of particular matters to be discussed with Management and the time necessary in disposing of such matters. From then to the present time the Company paid only for the actual time engaged in conferring with Management. Prior to the time referred to in this stipulation, the Company paid for the time both before, after and during such conferences.

Mr. MARION SMITH. That is correct, but the limitation is that the Company paid for time which was spent with reference to the conference, that is, preparing for the conference and disposing of the work in the conference.

Mr. WOODS. That is correct. In other words, the stipulation is limited by the first sentence in it.

Trial Examiner HEKTOEN. Does everyone join in the stipulation? Does every one agree?

(No response.)

Trial Examiner HEKTOEN. It is so stipulated.

* * *

347 Mrs. HAZEL BOSTICK, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Woods:

Q. Mrs. Bostick, are you at present an employe of the Southern Bell Telephone and Telegraph Company?—A. Yes.

Q. How long have you been an employe of that company?—A. Fifteen years this July.

Q. Are you at present an employe of the Shreveport plant of the company?—A. Yes.

Q. What is your position?—A. Toll operator.

Q. Now, are you at present a member of the Association?—A. Yes.

Q. How long have you been a member of the Association, as you recall it?—A. Well, since I entered the service in 1925.

Q. Now, do you recall during the year 1935 making any contribution to the Association?—A. Yes, I do.

Q. How much was that contribution?—A. 50 cents.

Q. Now, Mrs. Bostick, at the time that contribution was solicited, do you recall any meeting that was held in Shreveport to explain the purpose of the solicitation?—A. Yes, sir.

Q. Was that meeting held at sometime in either the latter part of May or June, 1935?—A. The early summer.

Q. The early summer of 1935?—A. Yes, sir.

Q. How were you informed of that meeting?—A. I was informed in the operating room to go to the Assembly room downtown by the District Traffic Manager—no, I wasn't notified by the District Traffic Manager, I was notified to go to the Assembly room downstairs to a meeting hall by the District Traffic Manager and my Chairman.

Q. That is your Local Chairman of the Association?—A. Yes, sir.

Q. The District Chairman of the Association?—A. That is right.

349 Q. Who was that at that time?—A. Mrs. Ethel Richardson.

Q. Who was the traffic manager at that time?—A. Mr. A. F. Bear.

Q. Is that spelled B-e-a-r?—A. Yes, sir; that is right.

Q. Did you attend that meeting?—A. Yes, sir, I attended it.

Q. Was it held in the General Assembly Room down town in Shreveport?—A. In the Assembly Room, office 2.

Q. Could you state for us about how long that meeting lasted, as you recall it?—A. I would say 45 minutes or an hour—possibly an hour.

Q. Without mentioning names, who were the people who attended it—were there operators?—A. Operators from my office, Office 8.

Q. And were there some from other offices?—A. I don't recall, but I do recall several girls from my office.

Q. Were you called off of your regular work shift, or not?—A. I was called off the switchboard and notified of the meeting.

350 Q. Were you paid for the time that you spent in that meeting, as you recall it?—A. Yes, sir.

Now, at that meeting, did Mr. Bear make any statement to the employees present?—A. Yes, sir.

Q. State briefly what remarks he made, as you recall them?—A. Well, he spoke first, and explained about the Wagner Act, and told us that inasmuch as the company had supported this organization for us for 16 years, the Association, that the least we could

do would be to give our contributions, because the company would be unable to interfere if outside organizations attempted to affiliate the employees.

Q. Now, did Mr. Bear make any other comments to Mrs. Richardson or to any of the other people present?—A. Well, our people hesitated a little, and they didn't make their contributions at once, and he asked Mrs. Richardson to talk to them; he told her that if there was anything she could say to her members to impress it, that it was important, to please talk to them, and she did.

Q. Do you recall anything that he said at that time regarding the possible effect of the Wagner Act on the company's continued participation in the affairs of the Association?—A. Not particularly, other than that the company would be unable to interfere—I mean unable to interfere, I suppose that is the word, if outside organizations came into it.

* * *

352 Q. Now, Mrs. Bostick, have you ever become a member of the American Federation of Labor, the IBEW, International Brotherhood of Electrical Workers?—A. Yes, sir.

Q. Do you recall about when you first affiliated with that organization?—A. I would say about in November, I made an application for membership.

Q. In November 1940?—A.

(No response.)

Q. While you were acting as chairman of the Association Local at Shreveport, did the Local have any funds of its own?—A. Yes, sir.

Q. Where were those funds kept?—A. They were kept in the operating room in a desk, in a desk in the operating room.

Q. In whose desk?—A. I would say a chief operator's desk; it was a desk in the chief operating room.

Q. Where were the files of the Association kept while you were acting as chairman?—A. We rented a locker from the company.

Q. Do you recall what locker rental you paid on that?—A. The usual arrangement was for twenty-five cents, for any employee, and I wasn't chairman when the amount was paid, but

353 I understood that that was what it was.

Q. Per month?—A. 25 cents for as long as he used it, just for the key, or the use of the locker, I don't know.

Q. At the time that you became chairman, how were the meetings of the Local of the Association announced to the employees?—A. They were posted on the locker.

Q. The locker that the Association rented, or on lockers in the rest room?—A. On the locker in the locker-room where the employees went in.

Q. When you became chairman, was that practice changed?—
A. I changed it after a conference with the NLRB representative.

Q. I didn't get your answer?—A. We were called in a conference with a NLRB representative, and that day we changed several of those practices.

Q. You are referring now to the December investigation made by Field Examiner Neblett?—A. Yes, sir.

Q. On the same day that Neblett was in Shreveport, was any change made in the method of keeping the money of the Local of the Association?—A. Yes, sir.

354 Q. What change was made?—A. The secretary opened an account in one of the local banks in which to keep the funds.

Q. Up to that time, had these funds been kept in the company's offices?—A. In the operating room.

Mr. Woods. That is all.

Cross-examination by Mr. MARION SMITH:

Q. I wonder if you will talk loud enough for the Examiner to hear you if I sit here?—A. I will try.

Q. I want to ask you a little more about that meeting in Shreveport. Was it Shreveport or was it New Orleans when the fifty-cent collection was taken up?—A. Shreveport.

Q. You said that Mr. Bear said something about what effect the Wagner Act would have on what the company could do?—A. Yes, sir.

Q. Won't you try to tell me a little more fully what he said?—
A. That is all I remember.

Q. Will you tell that over again, please?—A. Mr. Bear told us that inasmuch as the company had supported the organization for 16 years, that the least we could do would be to give our contributions to carry on the organization. And that after all,
355 the company would no longer have the right to interfere if outside organizations tried to affiliate the members.

* * *

388 Mrs. INA LEE BURROWS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Woods:

Q. Please state your name.—A. Mrs. Ina Lee Burrows.

Q. Mrs. Burrows, are you an employee of the Southern Bell Telephone and Telegraph Company?—A. Yes, sir.

Q. For how long have you been an employee of that company, about how long?—A. About five years.

Q. And part of that time, were you an employee of the
389 Southwestern Bell Telephone Company?—A. Yes, sir.

Q. During the time of your employment with the Southern Bell Telephone and Telegraph Company, where have you been located?—A. With the Southern Bell Telephone, Shreveport.

Q. The entire time that you have worked for the Southern Bell Telephone and Telegraph Company?—A. Yes, sir.

Q. Are you an operator there now?—A. Yes, sir.

Q. What is the name of the employment supervisor for the Shreveport area?—A. Mrs. Vivian McCain.

Q. Did you ever have any discussion with Mrs. McCain regarding the Association or the International Brotherhood of Electrical Workers, within the last three or four months?—A. Yes, sir.

Q. About when was it that you had that discussion?—A. About three weeks ago, two and a half or three weeks.

Q. Where was the discussion held?—A. In our rest room.

Q. Where?—A. In the rest room of the office.

390 Q. In the company's plant at Shreveport?—A. Yes, sir.

Q. Who else was present when you were talking?—A.

A Mrs. Mattie Waites.

Q. Was she there during the conversation?—A. Yes, sir.

Q. Was anybody else present?—A. Not that I recall.

Q. Will you please state for us the substance of what your conversation with Mrs. McCain was?—A. She asked me which side I was on, and I told her that I was on my own side, and she said—well, about that time, one of the new girls came in, and she says, "It is a shame we can't fire all of these old dissatisfied employees and replace them with new girls that would be appreciative of their jobs."

Q. Did she say anything else?—A. She stated that she thought they were going to do away with the Wagner Act, and at that time a girl came in that I was waiting for to go with me to nominate, and I left right in the middle of the conversation.

Q. At that time, were you leaving to go to any meeting?—A. Yes, sir; I was going to the Assembly Room to nominate.

Q. You say to the Assembly Room, for what?—A. We were nominating our chairman and vice-chairman to take the place of the chairman and the vice-chairman who had
391 resigned.

Q. In the Association Local?—A. Yes, sir.

Q. You were nominating somebody to succeed Mrs. Bostick, is that correct?—A. Yes, sir.

Q. Did you go ahead and attend that meeting?—A. There was no meeting; there was supposed to have been officers in there to hold this election, but at the time that I went in there, there was

only one person in the Assembly Room, and she was Mrs. Ruby Smiley.

Q. You were present, however, when the persons were nominated for the office of Chairman and Vice-Chairman?—A. No, sir; we cast our ballots secretly, and then they count them, so we have now way—we just go in and nominate, and then we leave; we don't stay for the election.

Q. Do you know whether Mr. Mason was nominated for the office of Chairman, of your own knowledge?—A. I don't know.

Mr. Woods. That's all.

By Mr. Woods:

Q. He received some votes, however, did he not?—A. Well, they never gave me the returns of the election until the officers went into office, so I don't know.

Mr. Woods. That's all.

• • •

392 Cross-examination by Mr. MARION SMITH:

Q. Mickey Mouse got some votes too, didn't he?—A. I don't know.

Q. You didn't hear that?—A. No.

Q. I understood that he did?—A. Well, I didn't.

Q. Mrs. McCain is a rather old lady, isn't she?—A. Yes, sir.

Q. Well into the sixties, isn't he?—A. I don't know here age.

Q. You know from looking at her that she is a very old lady?—

A. Yes, sir; she is an old lady.

Q. She is a sort of trained nurse?—A. I don't know; she takes care of our disability papers and employment.

Q. She looks after health conditions there, more or less?—A. Well, I would say "Yes."

Q. She is getting a little cranky, like people sometimes
393 do when they get old?—A. Well, I don't know.

Q. She did not purport to be quoting anybody but herself on this, did she?—A. I don't know; I don't where she got her information.

Q. She didn't claim to be speaking for anybody?—A. No, sir.

Q. But herself?—A. No, sir. —

Q. She appeared to be just expressing some views of her own?—
A. Yes, sir.

Mr. MARION SMITH. I think that is all.

By Mr. BRANCH:

Q. Mr. Mason is not a member of the Association, is he?—A. I don't think that they are allowed to be members; I am sure that the traffic manager and the chief operator are not allowed to be members of the Association.

Q. You can't elect an officer who is not a member, can you?—
A. Well, I wouldn't think they could.

Mr. Woods. I will concede that Mr. Mason was not elected, Mr. Examiner.

Mr. BRANCH. I thought you nominated him. I wanted to see why you nominated him.

By Mr. BRANCH:

394 Q. I really didn't understand all that you said that occurred there in the rest room, and if you don't mind, I would like for you to tell me again.—A. Mrs. McCain came in and sat down by the side of me while I was waiting there in the rest room for this girl to go with me to nominate, and she asked me which side I was on, and I supposed she was implying to this, because that was the general topic of discussion all over the office, and I says, "I am on my own side." And about that time, one of these new girls came in, and she said, "I wish it was so that we could get rid of all of these old, dissatisfied employees, and replace them with new girls that would be appreciative of their jobs."

Q. She didn't say anything about the Association, did she?—
A. No, sir; she didn't say anything about the Association.

Q. Is she a member of the Association?—A. No, sir; she is not.
Mr. BRANCH. Come down.

Redirect examination by Mr. Woods:

Q. When you designated Mrs. McCain as employment supervisor, what particular duties did you have in mind, that she exercised?—A. She takes the applications from girls that are seeking employment, and interviews them and goes down and brings them up to the office.

Mr. Woods. That's all.

397 Re-cross-examination (resumed) by Mr. BRANCH:

Q. Are you a member of the IBEW?—A. Yes, sir.

398 Q. When did you join?—A. At the very beginning.

Q. When was that?—A. I would say last October or November, the 1st of November.

Mr. BRANCH. That's all.

Trial Examiner HEKTOEN. Thank you.

Redirect examination by Mr. Woods:

Q. Are you also a member of the Association?—A. Yes, sir.

399 LORA SIBLEY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Woods:

Q. Is it Miss or Mrs. Sibley?—A. Mrs. Sibley.

Q. Mrs. Sibley, are you employed by the Southern Bell Telephone and Telegraph Company?—A. Yes.

Q. And you are employed at the Shreveport, Louisiana, plant?—A. Yes, sir.

Q. What is your position there?—A. Long distance supervisor.

Q. As long distance supervisor, what are your duties?—A. Well, I have to coach people and instruct them, and help them with their work.

Q. Now, Mrs. Sibley, while we are conducting this examination, you talk as though you are trying to make me hear you away back here?—A. Yes, sir.

Q. Then everybody can hear you. How long have you worked for the Company in Shreveport?—A. Fifteen years.

400 Q. Mrs. Sibley, who is the District Traffic Manager in Shreveport?—A. Mr. E. B. Mason.

Q. That is the Mr. Mason who is seated at the desk with counsel for the Company?—A. Yes.

Q. Now, do you recall about the time that the IBEW, the International Brotherhood of Electrical Workers, began to accept members from among the employes of the Company at Shreveport?—A. Yes.

Q. Now, during, or at about that time, did you ever have any conversation with Mr. Mason about that question, about the girls joining the IBEW?—A. No, sir; I did not.

Q. Did you ever talk to Mr. Mason about the effort of the IBEW to secure members from among the people working in Shreveport?—A. No, sir.

Q. Did Mr. Mason ever talk to you about that?—A. Well, only one time.

Q. When was that?—A. That was right after the charter had been filed, I believe.

Q. Right after the IBEW charter had been installed?—

401 A. Yes, sir; and that was the latter part of November or the first of December.

Q. 1940?—A. Yes.

Q. Now, how did that conversation come up?—A. Well, he came to me in the operating room this morning, and he said, "Mrs. Sibley, if you have any influence with your people, you should influence them against the union."

Q. I did not hear you.—A. He said, "Mrs. Sibley, if you have any influence with your people, you should influence them against the union. That was all that was said."

Q. And after you had that conversation with Mr. Mason, did you attempt to exert any influence over the people with whom you worked?—A. Yes, sir; I did.

Q. In what way?—A. Well, I just told them that we really did not need the union; that the Association was everything that they had or could get, you know, and I did not feel like that they would get any better than that, than they did out of the Association.

Q. Did you tell that to a number of operators working under you?—A. I only told it to a few.

402 Q. For example, did you tell it to Mrs. Torrey?—A. Well, I don't remember if I did. It does not seem like I did talk to Mrs. Torrey at all.

Q. You remember you did talk to the other operators?—A. I did not talk to but two operators.

Mr. Woods. That is all.

Cross-examination by Mr. MARION SMITH:

Q. Can you give me about the time when you say this conversation took place?—A. As far as I can remember, it was the latter part of November or the first of December.

Q. I mean what time in the day?—A. It was in the morning.

Q. Do you remember what day of the week it was?—A. No, sir; I don't.

Q. And where were you?—A. In the operating room.

Q. Do you remain seated in the operating room or do you walk up and down?—A. I stand.

Q. With one of those head pieces on?—A. Yes.

Q. And with a cord to plug in?—A. Yes, sir.

403 Q. And you walk up and down in back of the board, the switchboard?—A. Yes.

Q. Was there anybody else there?—A. No; there was not.

Q. And that, you say, is the only time anything has ever been said, one way or the other, between Mr. Mason and you?—A. Yes.

Q. You have been in supervisory conferences with Mr. Mason, have you not?—A. Yes.

Q. And there would be other supervisors with Mr. Mason discussing the Company affairs?—A. Yes.

Q. He, in those conversations, instructed you and the other supervisors, that they were to make no distinction whatever between those who were in the union and those who were in the Association?—A. That is right.

Q. That you were to be perfectly neutral?—A. That is right.

Q. And not to discriminate against anybody?—A. Yes, sir; that is right.

Q. On account of union activities?—A. That is right.

404 Q. Or on account of belonging to the union?—A.
That is right.

Q. You accepted that to be declaration of neutrality, did you?—A. Yes.

Q. And you tried to carry out those instructions?—A. Yes, sir.

Q. And the other supervisors tried to?—A. Yes, sir; they surely did.

* * *

410 E. H. WILLIAMS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Woods:

Q. Your name is E. H. Williams?—A. Yes, sir.
Trial Examiner HEKTOEN. What is your first name?

The WITNESS. E. H. Williams.

Trial Examiner HEKTOEN. That is all your name?

The WITNESS. That is my initials—do you want any more?

Trial Examiner HEKTOEN. I would like to have your first name, your full first name.

The WITNESS. Elijah H. Williams.

Mr. BRANCH. I couldn't hear what was said just then.

Trial Examiner HEKTOEN. I was asking him what the first name of the witness was, and he said that his first name was Elijah, that his name was Elijah H. Williams.

By Mr. Woods:

Q. However, you are called "Lige"?—A. Yes, sir; that is right.

411 Q. Where is your residence?—A. Shreveport, Louisiana.

Q. What is your occupation?—A. I am president of the Louisiana State Federation of Labor at the present time. Do you want to know my craft?

Q. No. Your duties are now those of president of the Louisiana State Federation of Labor, is that correct?—A. Yes, sir.

Q. Are you also the general representative of the American Federation of Labor?—A. Yes, sir.

Q. And under the credentials that you have as a representative of the A. F. of L., are you authorized to organize any unorganized employees?—A. Yes, sir.

Q. Now, Mr. Williams, when was your first contact with any of the employees of the Southern Bell Telephone and Telegraph Company at Shreveport—about when?—A. With reference to organization?

Q. Yes.—A. About the 1st of October.

Q. Of last year?—A. 1940.

Q. How did that come about?—A. By some of the ladies, I don't remember exactly whose names, but they called up for an appointment to come to my office, and they asked for assistance in organizing the union.

* * *

The ladies requested an appointment to discuss organization. They did come to my office and requested assistance in organizing into the American Federation of Labor. I advised the girls that they would be organized in the Electrical Workers Union, they have jurisdiction, and that I would be glad to help—it is my duty to help any of them—I would be glad to assist, but that I would contact an International Representative of the Electrical Workers Union and ask him to give whatever time it would take in assisting the girls to organize their union.

Q. Did you, pursuant to that statement, contact an International Representative of the International Brotherhood of Electrical Workers?—A. I contacted Mr. O. A. Walker, who is the International Representative of the Electrical Workers in that District, and advised him of the desire of the girls to organize.

Q. From October on down to the present time, have you assisted Mr. Walker in working with the IBEW among the Southern Bell Telephone Company employees at Shreveport?—A. Yes, sir.

Q. You are familiar with the persons who are members of your organization there?—A. Yes, sir.

Q. The officers of the Local?—A. Yes, sir.

* * *

414 O. A. WALKER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Woods:

Q. Your name is O. A. Walker?—A. Yes, sir.

Q. Is your first name Ollie?—A. No, sir.

Q. Well, what is your first name?—A. Well, let's just leave it off if you don't mind. It is Orie, O-r-i-e.

Q. Mr. Walker, where is your residence?—A. Shreveport, Louisiana.

Q. What is your occupation?—A. I am international representative of the International Brotherhood of Electrical Workers in District No. 5.

Q. What is the International Brotherhood of Electrical Workers?—A. The International Brotherhood of Electrical Workers is a labor organization made up of all electrical workers in practically all industries, in those different industries employing electrical workers.

Q. Is it affiliated with the American Federation of Labor?—A. It is affiliated with the American Federation of Labor.

Q. You have heard the testimony of Mr. Williams, have you not?—A. That is right.

Q. Do you recall when you first were asked to contact the employees of the Southern Bell Telephone and Telegraph Company in connection with organization?—A. I do.

Q. When was that?—A. I was contacted by Mr. Williams over long distance some time in the first part of October, and he called me and told me that they were desirous of organization and I then went to Shreveport for that contact with those people.

Q. And when you came to Shreveport, did you get in touch with the individual employees of the Southern Bell Telephone and Telegraph Company?—A. Mr. Williams had arranged a
416 conference between a group of telephone operators and myself, and it was held in his office.

Q. Was a charter installed for a Local of those employees in Shreveport?—A. Yes, sir.

Q. Can you recall about the time that the charter was installed?—A. The charter was applied for in November, and it was installed on the 4th day of December.

Q. You are referring, in all of your answers, to the year 1940?—A. Yes, sir.

* * *

423 JANE H. WILKES.

Cross-examination by Mr. MARION SMITH:

Q. Mrs. Wilkes, in some of the letters you sent out, that have been identified as exhibits, I am not sure of these particular exhibit number, there was a statement as to the number of applications for membership cards that were obtained in that 1935 drive for membership cards up to, say, the beginning of 1936. Do you recall that statement in there?—A. I do not recall the exact figure, Mr. Smith. I do know that up until 1936, the beginning of 1936, we had something better than 12,000 membership.

Q. The figure that you gave in the letter that is in evidence you verified at the time you wrote the letter?—A. I did so,
yes.

424 Q. And you knew that was correct, then?—A. Yes.

Q. There is also in one of those letters a statement of the number of employees who were eligible for membership at that time. Do you recall that figure?—A. Yes.

Q. What was it?—A. It was, we based it on 14,000 eligible employees at that time.

Q. That was your estimation then?—A. Yes.

* * *

426-427 H. S. DUMAS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MARION SMITH:

Q. Your name is what?—A. My name is H. S. Dumas.

Q. And your position with the Telephone Company is what, Mr. Dumas?—A. Vice-president, in charge of operations.

Q. Is that sometimes spoken of as operating vice-president?—A. Yes, sir.

Q. That place is second in rank to the president?—A. I report to him, sir.

Q. You report to him?—A. Yes, sir.

* * *

428 Q. How long have you been with the Southern Bell telephone and Telegraph Company?—A. It will be thirty years in July of this year.

Q. What did you start as?—A. Trouble-shooter.

Q. Well, then, what is that?—A. Repair trouble on telephones.

Q. You mean actually splice the lines, and that sort of thing?—

A. Yes, sir.

Q. Did you have anybody under you at that time?—A. No, sir.

Q. There wasn't anything under you at that time, was there?—

A. No, sir.

Q. Now, just briefly, what positions have you held since that time, Mr. Dumas?—A. I was placed in charge of the complaint bureau in Atlanta, Georgia, about a year after my employment, and I was transferred to Birmingham as a clerk in the traffic organization, and I was a district traffic manager for a good many years. I worked in various assignments in the traffic organization. I was transferred from Birmingham to Atlanta in 1929 as supervisor of traffic. That is a staff position. In 1934, in the summer, I became assistant to Mr. Warren, who was the operating vice-president at that time.

430 Q. It is in evidence that in 1935, Mr. Askev had a talk with you about a plan of his soliciting the fifty-cent contributions from members. Tell me what you recall about that, Mr. Dumas?—A. Askev came to me and said that the plan had been formed to solicit the contributions from the members of his organization so that—and it was done in prospect of the passage of the Wagner Act, so there would be money on hand to carry forward the affairs of his organization, and he asked that I assist him in getting the people who had been chosen to solicit that fund, relieved from duty, and if any unusual transportation was needed, that he wanted my assistance in that. As a matter of fact, neither

of those questions ever came up, and I heard nothing further about that particular part of the thing.

Q. You did tell him, did you not, that you would let them off?—A. Oh, yes, sir—that if any question arose, I certainly would do so.

Q. And I assume that they did that solicitation on company time?—A. I am sure it much have been done that way, sir; that was my understanding.

431 Q. Was that before or after the passage of the Wagner Act?—A. It was before.

Q. Was there any difference in that and what you had been doing for several years in connection with the employee activities of various kinds?—A. None at all.

Q. Go ahead, and give me a complete picture of it, as nearly as you can?—A. I think the reason that Mr. Askew came to me was because he thought these people might have to be away from duty a longer period of time than they had ever been before.

Q. The only difference would have been in the length of time?—A. That is all.

Q. Now, it is in evidence that the canvass for signed membership cards was after the passage of the Wagner Act. Was that done on company time or not—or is that within your personal knowledge?—A. I don't know.

Q. You just don't know?—A. No, sir; I don't.

Q. There has been put in evidence a contract, of September 3, 1935, dated September 3, 1935, between the Association and the company. Do you know the contract to which I refer?—A. Yes, sir.

Q. You participated in the negotiation of that contract, 432 did you not?—A. I did.

Q. What, if anything, was the understanding as to when that contract was to actually become effective?

Mr. Woods. I object to his recollection of what the understanding was; if any statements were made in the course of the conference in which this contract was negotiated—

Mr. MARION SMITH. I will withdraw it and restate the question.

By Mr. MARION SMITH:

Q. What was the substance of any statements made between you and whoever acted for the Association in connection with that contract as to when it would be effective?—A. During my conference with this so-called small committee, I was told that they did not expect it to become effective until the constitution they were working on was ratified.

Q. Did you or not assent to that?—A. Yes, sir; I did.

Q. And it was on that basis that it was signed?—A. Yes, sir.

Q. Mr. Dumas, there is in evidence, minutes of the meeting of the General Assembly in 1935, at which the minutes show that you made a speech of some character. Have you been requested to try to refresh your recollection of what you said on
433 that occasion?—A. I wouldn't call it a speech.

Q. Well, remarks, then?—A. My remarks were to this general effect.

Q. Has your attention been directed to that in the last day or two?—A. Yes, sir.

Q. And have you been requested to mull it over, and get the best recollection that you can?—A. Yes, sir.

Q. Why did you appear there at all, Mr. Dumas?—A. I was asked to appear in place of Mr. Warren who was out of the city.

Q. Now, tell me, to the best of your capacity, as you remember it, the substance of what you said on that occasion. I understand that you can't remember everything, word for word, but give me the best recollection of its substance that you can reproduce now?—A. I said, in effect, Mr. Smith, that I regarded the Wagner Labor Law as a sort of Magna Charta or Declaration of Independence for labor in these United States; that that law stated for the first time, the labor policy of this country, the government of this country. I said further that it was my feeling that that law settled a great many things that had been in controversy and had disturbed the peace of labor relations in this coun-
434 try, and I said that our company proposed to obey that law up to the hilt, in letter and in spirit, and I said further that this company intended to obey that law not only because our company was a law-abiding organization, but because we heartily approved of the objectives and the policies that that law set forth.

Q. Is that, roughly, the substance of that speech?—A. I am sure it is, sir.

Q. That was after you had attended that conference that Mr. Warren held in July about the Labor Act?—A. Yes, sir.

Q. Now, I want to ask you about that conference, Mr. Dumas. Let me see if I can give you the date of it. Do you remember a conference of Mr. Warren—who was then operating vice president?—A. Yes, sir.

Q. And you were his assistant?—A. Yes, sir.

Q. Do you remember the conference that he held on July 16, 1935?—A. Very well, sir.

Q. On the subject of the Wagner Act?—A. Yes, sir.

Q. I believe you heard Mrs. Wilkes state who were present, so I won't go over that again. Were those whom she stated were
435 present, substantially so?—A. I think so.

Q. You have also been asked to recall Mr. Warren's remarks on that occasion, as well as you could, have you not?—A. Yes, sir.

Q. And you have given a good deal of thought on that, have you not?—A. Yes, sir; a good deal.

Q. I will ask you not to state, to the best of your capacity to recollect it today, the substance of what Mr. Warren said at that conference?—A. Mr. Warren read the Act, and while he was reading it, discussed some of its provisions. He stated that it was the policy of our company to obey that law in every way possible. I do remember, Mr. Smith, that at that time there were a great many things about the law that we were somewhat confused as to just what they did mean, and it was known and Mr. Warren said, he mentioned that that was true, and he said as we became more familiar with the provisions of this law, that we all would be told of those changes, or whatever changes might come about, in our knowledge of what the law meant, in detail.

Q. Were interpretations mentioned, as well as changes in the law?—A. Yes, sir; exactly; it wasn't changes in the law, but changes in what we thought the law meant.

436 Q. Changes in any interpretations of the law?—A. Yes, sir.

Q. And its application?—A: Yes, sir. And he said that he wanted the men there who were the responsible state officers, and the other members of the general staff, to call their supervisory forces in and go over the law in the same way, and endeavor to give them the same picture, and he stressed to them that they must see that everybody understood that we expected to obey the law in every possible way. I remember this—whether this adds anything to what I may say—that Mr. Warren said that the supervisory employees of this company must not, in any way, express themselves as to whether the employees should or should not belong to a labor organization of any kind. That, to his mind, was one of the main things we did know, that we should carry forth.

437 Q. Do you remember what he said on the subject of discontinuation of contributions to the Association?—A. Yes, there was a good deal of conversation about that, and he said, of course, we could not continue to make contributions to the Association. But, maybe I am getting ahead of you, sir, but he read a sheet that all of us had prepared. It may have been ineptly designated, but it was headed "Wagner Bill Interpretations." I believe.

Q. That was the first of these interpretations that have been put in evidence here?—A. Yes. My recollection is that Mr. Warren said at that time that those were the things that come into his mind, the law did not specifically make clear.

Q. Now, you said, "we all prepared." Who did you mean by "we all?"—A. Well, Mr. Warren, myself and Mr. E. D. Smith.

Q. Wait a minute. He was General Counsel?—A. Yes, sir.

Q. And he is still with the Company?—A. Yes, and Mr. Kerr.

Q. Mr. Kerr who is now Assistant to the President?—A. Yes.

Q. Did that there represent the best judgment of that group, as then advised, as to what you had to do under the Act?—

438 A. Yes, sir.

Q. And, Mr. Dumas, did later interpretations result from later rulings and better information as the matter developed?—

A. Yes, sir.

Q. Mr. Dumas, has it or not, from then on, been the policy of the Company to endeavor to see that the requirements of that Act were complied with by all of the supervisory officials?—A. Most certainly.

Q. With regard to this particular conference with Mr. Warren, that the heads were directed to transmit down the line, you yourself, being a staff officer, would not be within that direction, would you? Or would you not?—A. I have no direct responsibility for doing it, but I have, of course, a great many contacts with supervisory people and employees?

Q. Now, what did you do, if anything, to carry out those directions in transmitting the statement of the Company's position?—

A. I told them exactly the things that had been told at that meeting.

Q. So far as it comes within your knowledge, did other supervisory officials do the same thing?—A. Yes, sir.

Q. Are you or not in a position to know whether that
439 information was widely distributed throughout the Company?—A. I am.

Q. And the employe body?—A. I am.

Q. Well, was it or not?—A. I am sure that it was.

Q. Within your knowledge, since that time, has the Company in any way departed from that policy?—A. No, sir.

Q. Within your knowledge, have there been any instances of coercion or intimidation with respect to joining or forming, or not joining and forming labor organizations?—A. No, sir.

Q. Within your knowledge, have there been any threats, discharges, or other such matters on account of any employe's action in connection with labor organizations?—A. No, sir.

Q. Has the Company, to your knowledge, ever employed any labor spies?—A. No, sir.

Mr. Woods. Mr. Examiner, I object to all of these things. The complaint here is clear, and charges one thing, that is, domination of the Association, and I have not charged, and do not now charge, and will not charge that the Company has discriminated
440 against any employe for union membership, or that it has violated any section of the Act other than 8 (1) and 8 (2).

Mr. MARION SMITH. Well, basing this issue on the matter of Company domination, prior to the passage of the Wagner Act, the Company contributed to the support of this organization, and admittedly occupied a relation to it that is prohibited by the Wagner Act. There is no dispute or question about that part of the Board's Case. My own judgment, as to whether this is proper or not, dealing as we do with the present, not with the past, the past only counts as it should, tends to show present conditions, is that it is not sufficient, or certainly we are not limited to show that it is technically not the same organization. It is not, to my mind, of vital importance, whether it is technically the same organization, or another organization, but we undertake to show, and what is in effect the only way we can meet the charge of this kind, is to show that immediately on the adoption of that Act, we wholeheartedly, without qualification, without evasion, and in the utmost good faith, purged that relationship of everything that the Act condemned, and that from 1936 on, five years or longer, there has been nothing in this Company's relationship to it, and what we will ask is a finding that whatever happened before that time has faded out of the picture, and we have no other way of meeting it.

Mr. Woods. I have no quarrel with that purpose.

* * *

443 Q. Did Mr. Askew explain to you that the need for making this canvass was a desire to finance the Association and make it self-supporting in the light of the probable passage of the Wagner Act?—A. Yes, he did.

444 Q. And you realized at the time that you were consenting to an arrangement to finance an organization, a labor organization, which would exist after the passage of the Wagner Act?—A. Yes.

* * *

445 Q. Do you know whether Mr. Warren signed that joint agreement before or after the assembly started?—A. After the assembly was dismissed, I believe.

Q. Then, he signed it on the date that the instrument itself bears, that is, September 3, 1935?—A. I feel sure that he did, sir.

Q. Well, do you know?—A. No, I don't. I was not present.

Q. You were not present at the signing of the contract?—A. No.

Q. You don't know, of your own knowledge, do you, what understanding Mr. Warren may have had with the Association?—

A. I do not know. I could say I told him what these people told me.

Q. But you don't know whether or not, at the time of the signing of the contract, Mr. Warren understood that it was not to become effective until later?—A. I am sure Mr. Warren—I don't know what he knew, but I know I told him they had told me that, I told Mr. Warren that those people had told me as to when this proposed agreement would become effective.

446 Q. But you don't know anything at all about what transpired between those people and Mr. Warren at the time of the signing of the contract?—A. No, sir.

Q. Now, what person among the group of that small committee meeting informed you that they wanted you to negotiate a contract which would not become effective until some time later?—A. Mr. Weil, to the best of my recollection.

Q. What reason did Mr. Weil give?—A. He said that the ordinary person would not be in position to bargain with the company until their constitution was ratified.

Q. But what—but he wanted you to go ahead and do it anyway?—A. He wanted me to agree to the agreement, yes; or to recommend to Mr. Warren that he sign the agreement.

Q. Mr. Dumas, I assume, without knowing, that the Southern Bell Telephone and Telegraph Company has hundreds of contracts in effect all around the United States, has it not?—A. I am sure they do.

Q. Those are contracts aside from Labor Contracts?—A. Oh, yes.

Q. For equipment, and matters of that sort?—A. Well, perhaps a good many, a great many varieties of things; yes, sir.

447 Q. Is it your practice, as a business man, when signing an instrument, a contract; before that instrument, or at a time when you know the instrument will not go into effect until some time later?—A. Oh, yes.

Q. You sign many such contracts?—A. Yes; I think so.

Q. Have you ever signed a contract when the contract itself did not disclose, within its body, the time when it would become effective?—A. I can't recall that, sir.

Q. Now, have you ever signed contracts with a person, when they had no authority to sign contracts?—A. I don't believe we have.

Q. Isn't it your practice, as a business man, to determine the authority of the person who signs your contract, before you sign contracts with them?—A. It is.

Q. And speaking for Mr. Warren, wouldn't you say that that is his practice too?—A. It sure is.

Q. Did the Association representatives on that small committee present you, at the time that they requested the bargaining agreement under this new joint agreement, any proof that they
448 represented a majority of your employees?—A. They merely made the statement that they expected to form this organization.

Q. Did they give you any proof that they represented a majority?—A. No, sir; they did not.

Q. How long did you continue to do the bargaining with the Association for the company?—A. May I explain my position, sir?

Q. Yes.—A. I did not really conduct all the negotiations for the company with the Association, but I served in the capacity that I then occupied, until I became General Plant Manager in 1936, and then conducted the negotiations until 1938 when I went into my present job.

Q. Well, at any time when the committees were negotiating with the Association on a joint agreement, did you make a request that they present you with proof of these claims of majority representation?

* * *

449 The WITNESS. Well, I may have. My recollection, Mr. Woods, is that the only joint agreement that I had anything to do with had been in 1936, and at that time, we did have substantial evidence as to the fact that the Association was representing a large body of our employees.

By Mr. Woods:

Q. Did you demand the production of such evidence?—A. I don't believe that I did, sir. I knew it already.

Q. How did you know it?—A. Because at that time, we were making certain pay-roll deductions on requests from individuals who asked us to turn the money over to the Southern Association of Bell Telephone Employees.

Q. You considered pay-roll deductions as authorization to the company to be the collective-bargaining agent?—A. I understood that that indicated it particularly.

Q. Now, in your conferences that you had with Association representatives in 1935, and also in 1936, did any one of those

representatives, at any time, ask the company to recognize the Association as the exclusive bargaining agency?—A. I believe that they did, sir.

450 Q. And was such recognition accorded to them in writing? If you did accord it?—A. I would have to see the records. I don't recollect whether there was a written recognition or not, but I think there was.

Q. The thing I am particularly concerned about, Mr. Dumas, is this, whether you were ever asked to give that exclusive recognition?—A. Exclusive?

Q. In other words, as the exclusive bargaining agency for all the employees?—A. This is my best understanding; I think yes; I think so.

Q. You don't know whether that was put in a contract, do you?—A. No; I do not.

* * *

452 Q. In your comment to the General Assembly in August 1935, did you make any reference at all to outside labor organizations?—A. No, sir.

Q. Did you make any reference at all to any other labor organizations besides the Association?—A. Not that I recollect, sir.

Q. Did you inform the employees at that time that the Association as such was being dissolved by the company?—A. No, sir.

Q. Has the company ever taken any steps to dissolve or disband the Association?—A. Not that I know of.

* * *

456 Q. In Mr. Warren's comment at the conference of July 16, 1935, did he make any statement with reference to the dissolution of the Association?—A. I don't believe so.

Q. The substance of his remarks was simply that the
457 company would have to remove its financial support from the Association, is that correct—insofar as he referred to it?—A. I believe that was the substance of what he said.

* * *

Redirect examination by Mr. MARION SMITH:

Q. Mr. Dumas, Mr. Woods asked you whether in your talk to the General Assembly in August 1935, you referred to any other labor organizations. Now, I understood you to say "No"?—A. I don't remember that I did. I don't believe that I did.

Q. You also said in your direct examination that you said the Act meant that the employees were free to do whatever they wanted to about joining any organization that they wanted to. You didn't mean to qualify that by your later statement that you didn't refer to outside labor organizations?—A. Not in the least.

Q. What you meant was that you didn't refer to them by name, or directly?—A. That is what I understood him to ask.

Q. About how many exchanges has the Southern Bell Telephone and Telegraph Company?—A. Over nine hundred.

Q. Over nine hundred exchanges?—A. Yes, sir.

* * *

460 J. S. KERR, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MARION SMITH:

Q. You have given your name to the reporter, I believe, as Mr. J. S. Kerr?—A. Yes, sir.

Q. Now, what is your position with the Southern Bell Telephone & Telegraph Company, Mr. Kerr?—A. Assistant to the President, with my duties largely concerned with personnel matters.

Q. How long have you been with the Company?—A. Since June 1, 1906.

Q. How long have you been Assistant to the President?—A. Since October 1936.

Q. Now, immediately prior to that, in 1935, what was your connection with the Company?—A. In 1935, I was General Employment Supervisor for the Traffic Department; that was also largely concerned with personnel matters, and in that capacity I was very closely associated with the general personnel matters for the Company.

Q. Was there any position that you held between that and the position of Assistant?—A. Yes, sir; from January 1, 1936, 461 to October 1, 1936, I was general Personnel Supervisor reporting to Mr. Dumas, and, in that capacity, I was very much concerned with personnel matters for the Company as a whole.

Q. Are you in a position to give me the figure I asked Mr. Dumas for? I will define what I mean; the number of employees other than occasional employees and those who have some supervisory power over other employees—about how many would that leave with the Company—and if you can't answer it now, just say so, and—A. I am sure that I can answer it now as well as I ever can.

Q. All right, what is your best estimate of that?—A. My best estimate is around 20,000.

Q. Your best estimate is around 20,000?—A. Yes, sir.

Q. That would be approximately correct?—A. Yes, sir; that would be approximately correct.

Q. Were you present at the conference that Mr. Warren held on July 16, 1935?—A. I was.

Q. With regard to the Wagner Act?—A. I was.

Q. You heard Mr. Dumas' testimony?—A. Yes, sir; I did.

Q. If I may be permitted to do so, instead of asking this witness to repeat what Mr. Warren said, I will ask him if Mr. 462 Dumas' statement of that is substantially in accord with his recollection?—A. It is.

Q. I can save time on that by doing it that way. What do you know about what steps were, in fact, taken to carry out Mr. Warren's directions that that information as to the Company's position was disseminated throughout the Company's system?—A. Mr. Smith, I know that these people—that the State heads went back to the respective States, and, at that time, I was traveling around the territory quite a bit, and in one way and another, I was constantly in touch with the activities going on at that time, and I know they called the District heads and the District supervisory people in and had a similar discussion with them that they had here in Atlanta, and my recollection is that they, in turn, talked to the employees rather generally about the substance of that talk that Mr. Warren had.

Q. You cannot, of course, of your own knowledge, know how widely group meetings of the employees were called?—A. No, sir.

Q. But is it within your knowledge that they were called?—A. I know that in some cases they were.

Q. And that the message was delivered to the employees in 463 that manner?—A. Yes, sir.

Q. Now, again referring to Mr. Dumas' testimony, you heard Mr. Dumas' testimony as to the policy of the Company at that time with respect to neutrality and nondiscrimination in labor matters?—A. I have.

Q. So far as it is within your knowledge, is your information in accordance with his statement on that subject?—A. Yes, sir; it is.

Q. I want to ask you a little more now about the bargaining process that has taken place, say for the years 1936, 1937, 1938, 1939, and 1940. The active handling of bargaining details is in group conferences or joint conferences, is it not?—A. It is.

Q. Can you give me the main outline of these joint conferences—I mean the general management conferences with the appropriate representatives, and so forth?—A. Yes, sir.

Q. I just want the scheme of it first—the alignment of it.—A. Well, the principal bargaining, of course, is carried on with the departmental heads located in Atlanta.

Q. Now, let's elaborate that. What meeting will take place there, and who will come?—A. The representatives for the

464 various departments throughout the Company.

Q. The representatives of that group of employes in that department?—A. Yes, sir.

Q. Will meet with the executive officers of that department?—

A. With the General Department heads in Atlanta.

Q. And are minutes kept of such meetings?—A. They are.

Q. And I will ask you whether or not at the termination of that meeting are copies of those minutes exchanged by both sides?—A. They are.

Q. Has that or not been the uniform practice for the years that I have specified as the subject of this inquiry?—A. It has.

Q. When an agreement is reached, it is so stated in the minutes, is it not?—A. It is.

Q. And the signed copies of the minutes would constitute the contract that each party has?—A. Yes, sir.

Mr. MARION SMITH. I am not going to put all of these documents in evidence, and I am going to identify them here and under an agreement with Mr. Woods, I will get at it in a different way. I would like to have the record show that they are actually produced:

—By Mr. MARION SMITH:

Q. That is the Company's copy of what?—A. This is a copy of the minutes of the joint conference meeting between the General Commercial Board and the General Commercial Manager in February 1935.

Q. And below that are the following years, are they not?—A. Yes, sir.

Mr. MARION SMITH. I would like to have the record show that these documents are produced and are available for any one who wants them.

Mr. WOODS. I would like to have an opportunity to see them, please, sir.

Mr. MARION SMITH. Very well.

By Mr. MARION SMITH:

Q. That is the department of the Company known as the Commercial Department?—A. The Commercial Department.

Q. I hand you now another group of documents there and ask you to state what they are.—A. This particular one is a joint conference between the General Plant Manager and the General Plant Board held in February 1936.

Q. And the following minutes are the plant conferences for—

A. For various years.

466 Q. That I have indicated to you?—A. That is right.

Q. That is the Company's signed copy of those minutes?—

A. Yes, sir.

Q. This certain group of document that I hand you are what, Mr. Kerr?—A. These are the minutes of joint conferences between the General Traffic Board and the General Traffic Manager for the different years.

Q. The General Traffic Board, that being the Association representatives?—A. Yes, sir; the Association representatives.

Q. For the years in question?—A. Yes, sir.

Q. And that is the Company's copy of those?—A. Yes, sir.

Q. This group of documents that I hand you headed "Minutes of Joint Conference between General Accounting Board and the Management held in Atlanta," and so forth, are the minutes for the Accounting Department?—A. Yes, sir; for the Accounting Department.

Q. With the representatives of the Association for the years in question?—A. Yes, sir.

Q. In addition to that, there are bargaining conferences similarly resulting in signed minutes between the General
467 Executive Board of the Association and the President of the Company, are there not?—A. There are.

Q. I hand you a group of documents and ask you if those are the Company's copies of the minutes of those bargaining conferences for the years in question?—A. They are.

MR. MARION SMITH. I state for the record that all of those have been handed to Mr. Woods for his inspection.

By MR. MARION SMITH:

Q. Now, Mr. Kerr, the major part of the bargaining between the Company and the Association for those years is reflected in those minutes, is it not?—A. It is.

Q. Are there or not, or also, and have there or not been during this period bargaining conferences in the Districts and in the Divisions between the corresponding Divisions of the Company's business and the appropriate unit of the Employees Association?—A. There have.

Q. Those minutes are kept in the Districts and the Divisions?—A. Yes, sir; that is correct.

Q. But the practice has been similar except relating to the Districts and the Divisions?—A. Yes, sir.

Q. And relating to matters that would not affect the Com-
468 pany as a whole?—A. Yes, sir.

Q. In the main, those relate to individual matters?—A. Yes, sir; and to grievances and complaints.

Q. To what extent have you participated, if at all, in those discussions, in your capacity as personnel head?—A. In a good many cases I have acted as the Management's representative at a good many of those meetings, and in others I have sat with the officials of the Company while those meetings were being conducted.

Q. I have asked you to prepare a statement in summarized form of what you believe is shown in those minutes in a very generalized form; that is correct, is it not?—A. Yes, sir.

Mr. MARION SMITH. And this procedure is by agreement between me and Mr. Woods—

The WITNESS. I had examined that statement.

Mr. MARION SMITH. Is that statement correct; is it a correct statement based on the minutes of these meetings that have been identified?

The WITNESS. Yes, it is.

Q. Now, the figures in there as to the total amount of wage increase reflected in this period by these minutes is the figure that you would have to supply by compiling the results of the individual increases?—A. Yes, sir.

Q. That is the figure of \$3,000,000?—A. Yes, sir.

Q. And that is not a figure written in the minutes, but—
A. It is compiled by reviewing these minutes.

Mr. MARION SMITH. Shall he read that into the record, or shall it just be identified as an exhibit?

Mr. WOODS. It seems that it could go in as an exhibit.

Mr. MARION SMITH. Well, it is very short, and suppose that he just read that one.

The WITNESS (reading). I have examined the minutes of the above bargaining conferences—

Trial Examiner HEKTOEN. What is the objection to putting it in as an exhibit?

Mr. MARION SMITH. There is no objection to it going in as an exhibit if you desire it go in that way instead of his reading it into the record.

Trial Examiner HEKTOEN. All right, I think it would be better that way.

Mr. MARION SMITH. We offer this document then as Respondent's Exhibit No. 1.

(Thereupon, the document above referred to was marked "Respondent's Exhibit 1" for identification.)

Mr. WOODS. As counsel has indicated, I don't object to it, but I do not concede that it is relevant to the issues here.

Trial Examiner HEKTOEN. I don't know just how it is relevant.

Mr. WOODS. At the time I stated I had no objection to it, I had not read the statement, but by a quick perusal of it, it indicates that I will have some objection to it.

Trial Examiner HEKTOEN. I took it for granted that you had read it.

Mr. MARION SMITH. Shall we take a short recess for counsel to read it?

Trial Examiner HEKTOEN. Very well.

(Whereupon, a short recess was taken.)

Mr. Woods. I have no objection to the exhibit except as to paragraphs 2 and 3 on the first page; and I object to those paragraphs because they are mere statements of opinion and not statements of fact. My understanding in connection with the preparation of this exhibit was that the exhibit would reflect the fact.

Mr. MARION SMITH. The paragraph that you object to is what—2 and what?

Mr. Woods. Paragraphs 2 and 3; my understanding of it was that the exhibit would simply reflect in digest form the benefits secured by the Association through bargaining with the Company over a period of years. Now, whether the bargaining was vigorous or not, I think that is a matter of dispute, although not particularly relevant. My own reaction to reading the Association's minutes is that it was never vigorous.

Mr. MARION SMITH. I think that anybody that will read those minutes will arrive at that conclusion. I realize that it has that element of conclusion in it, and I must do it that way or put the minutes in.

Trial Examiner HEKTOEN. You object to the statement that in all of these minutes there is shown genuine bargaining and so forth?

Mr. Woods. Yes, sir.

Trial Examiner HEKTOEN. I don't know. I suppose that if it is a conclusion of the witness or of the minutes, or whatever you want to call it, that the objection will have to be sustained and some other tack will have to be taken.

Mr. MARION SMITH. I see that. Then, if it is not put in in that way, I will have to start putting in the minutes.

Mr. Woods. I am very sorry that I can't agree with counsel on that.

Mr. MARION SMITH. Maybe we can agree on a statement of that overnight if I may be permitted to defer it until tomorrow.

Trial Examiner HEKTOEN. The witness, I suppose, will have to come back in any event.

Mr. MARION SMITH. Yes, sir.

• • •

477 Mr. MARION SMITH. We have made an agreement about these minutes of a more limited character, that will be helpful to some extent. Let me see if I can state it, Mr. Woods, and see if it is correct:

Mr. Woods agrees that we may put in these statements as statements of the witness; he does not agree that they necessarily are

correct as to the minutes, and for that reason, the minutes themselves will be put in the record as the ultimate source of information on the subject when there is a disagreement.

Mr. Woods. That is correct.

487 Cross-examination by Mr. Woods:

Q. Judge Kerr, since 1936, have you done most of the bargaining with Association representatives on a joint basis, that is, joint agreement bargaining?—A. No; I have not.

Q. Did you in 1938 or 1939?—A. No. If you will permit me, I will be glad to tell you just how that has operated.

488 Q. Go ahead.—A. The principal bargaining is carried on between the various general departmental Boards and the departmental heads of the company. For example, the bargaining in the Traffic Department is carried on, for the employees in that department, between the General Traffic Board and the General Traffic Manager, and for all matters relating to all departments of the Company, what you might say the over-all affairs of the bargaining, or matters that are appealed from some of these general department boards, are carried on between the General Executive Board and the President or Operating Vice President of the Company. Now, there have been times when I have sat in as the Company's special representative in dealing with this General Executive Board. There also have been a good many occasions when I have sat in with the departmental people, and the customary procedure is for me to sit in with the President when he is conducting his conferences with the General Executive Board.

Q. Well, at the time of the negotiation of the 1940 Joint agreement, were you present during negotiations?—A. Yes, and, of course, it fell to my lot to do quite a bit of the negotiating on that.

Q. And with reference to 1939, when the joint agreement for that year was negotiated, were you present at most of the conferences?—A. As I recall it; yes, I was.

* * *

492 Q. I believe you said, in your statement in the record, in Respondent's Exhibit 1, a number of subject matters were discussed in those bargaining conferences, among them vacations?—A. Yes, sir; that is true.

493 Q. I believe the present policy of the Company is two weeks vacation up to fifteen years of service, and then three weeks after that?—A. Three weeks after fifteen years.

Q. How long has that policy been in effect?—A. As I recall since 1939.

Q. And that was a concession or benefit granted to the Association after bargaining with them in 1939?—A. Yes; as I remember, that first came up in 1939 in some of the departmental meetings, and the demand was declined, and it was pretty freely and frankly discussed, and it was again brought up in 1938 and again discussed, and a good reason given as to why it should not be granted.

Q. A good reason in whose opinion, Mr. Kerr?—A. Well, in the Company's opinion.

Q. All right, proceed.—A. Our surveys made indicated that that is not the general situation in our territory, to grant three weeks vacation, and we assigned that as one of the reasons, among others, and still the demand continued, and was renewed even more vigorously in 1939, and finally the Company granted it in 1939.

* * *

495 Q. Now, also in Respondent's Exhibit 1, the statement you made, you referred to wage increases which have been granted from time to time during the course of time over the last two years. You stated that, on the whole, the cost of granting those wage increases, and also certain other benefits to Association representatives, was in excess of three million dollars. In estimating that amount, were you figuring the total cost of all benefits granted to the employes through bargaining with the Association from what date?—A. No, I was not referring to all increases. In reviewing those minutes, I stated that we found 60 separate demands for wage increases, and that the estimated amount of money involved in those 60 demands was something in excess of three million dollars. As a matter of fact, the wage bill, due to increases, is an amount in excess of that.

Mr. MARION SMITH. Those figures are annual figures, I am sure.

The WITNESS. Yes, those figures are on an annual basis. I just merely took the 60 cases there that had occurred to me. For example, the amount for the matter that you mentioned here about the three weeks vacation, as I recall, that amount was, that cost us, at the time we granted it, it cost us something like, we estimated it would cost us about \$99,000 a year to employ substitute
496 operators to relieve the people who were taking the three weeks vacation, and such as that, there were 60 separate instances that I referred to.

Q. The \$3,000,000 then just referred to the 60 separate instances?—A. Yes.

Q. Occurring over a period of the last few years?—A. —Occurring from January 1936, on through 1940.

* * *

523 J. E. WARREN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MARION SMITH:

Q. Mr. Warren, what is your connection with the Southern Bell Telephone and Telegraph Company?—A. President.

Q. How long have you been President?—A. Since August 1935.

Q. How long have you been connected with the Company?—A. 41 years in May coming.

* * *

524 Q. What position did you occupy in July, 1935?—A. I was Vice-President in charge of operations.

Q. Mr. Read was President, was he not?—A. Yes.

Q. You were taking a very active part at that time on account of his health, as well as on account of your position?—A. Yes, sir; he was desperately ill during most of the year 1935, and I was pretty well pinch hitting for him, as well as having direct charge of Company operations in my position as Vice President.

Q. Do you recall a meeting that you held in Atlanta at your call in July, July 16, 1935?—A. Yes, I do.

Q. Without calling their names, just indicate their positions, of the group of people that you called to that meeting, Mr. Warren?—A. I had all of the general officers, all the general staff heads from the headquarters organization; the division heads or state heads, as we usually refer to them, from all of the eight divisions in which we operate.

525 Q. There are nine states, but eight divisions, because the Carolinas come through one division?—A. That is correct.

Q. Now, how many heads are there in each division?—A. Four heads, plant, commercial, accounting and traffic.

Q. You had those four from each division?—A. I am not sure that each of the accounting heads were there. I know that the main operating heads, the plant, commercial and traffic were there. I can't remember just beyond that who might or might not have been there.

Q. You also had two representatives from the Association?—A. Yes; I remember particularly that I invited Mr. Askew and Mrs. Wilkes to sit in.

Q. What was the purpose of that meeting, Mr. Wilkes?—A. To discuss with them in detail the National Labor Relations Act that had, on July 5, become a law; to thoroughly acquaint them with the law itself, the interpretations of it, and to stress to them the scope as well as their responsibility in connection with their supervisory administrative positions through the Act.

Q. Did you have copies of the Act there?—A. I did.

Q. Did you read parts of the Act to them?—A. Yes, I read, I know I read it, and I happened to have the copy of the Act
526 that I had at the time of that meeting. I know that I read the paragraphs which I have marked. Whether I read the entire Act, which was not marked, I cannot recall.

Q. Well, now, did that or not include Sections 7 and 8 of the Act?—A. Sections 7 and 8 were, of course, the sections that I was particularly interested in bringing to their attention very forcefully, because those sections, No. 7, sets out the rights of the employes and Section 8 sets out the unfair labor practices for an employer. I was particularly anxious that the Management representatives have a very clear understanding of those things that we considered unfair labor practice in addition to the fact that the employes had their rights to select their own representatives, their own unions, or their own associations, and that Management must exercise an absolute "hands-off" policy, and in no particular advise with them on those matters, and that we could not, under any conditions, indicate what form of organization, if we had any opinions, that we preferred that they follow.

Q. Did you so state to them in accordance with just what you said there?—A. I did.

Q. Mr. Warren, I am under the impression there are some marginal notes on this copy you read from in your handwriting.
527 Am I correct about that?—A. Yes.

Q. May I look over your shoulder. In the margin opposite a part of Section 7, which is headed "Right of employes," there is some pencil handwriting. Will you read that pencil handwriting, please, sir?—A. "Cannot talk, Cannot advise. Cannot tell employes what form of organization we prefer."

Q. Whose handwriting is that in?—A. That is my own handwriting.

Q. Well, was that or not a note you made preparatory to addressing that meeting?—A. Yes, and I think I particularly wanted to stress those points, so I just jotted them down as a reminder of dwelling on those particular things.

Q. And did you so dwell on them?—A. I did. I would judge that this meeting consumed two or three hours; I cannot remember exactly how long, but I know we were in session for, probably, as much as two or three hours; most of a full morning. And, during that discussion, we undertook to clarify, as far as we could, the meaning of a great many of the words and phrases used.

Q. Mr. Warren, has it been the policy of the Southern Bell Telephone and Telegraph Company to try to clarify problems by
528 personal conference rather than by writing, when it can be done?—A. On any important matters that we want to carry messages through the organization, and have it fully

understood, have the subject fully understood, we find, by experience, and as a matter of practice over the years, we have carried that message to our responsible organization heads by discussion and full analysis of the subject, so that it would not only be the importance of it stressed in their minds; but also that they would have a clear understanding of it. In all operating matters, practically, we do resort to that practice.

Q. Now, what instructions, if any, did you give them with reference to their communicating with people under them in their territory?—A. I told them definitely that I expected that they would go back to their respective assignments of territory and have meetings with their responsible heads, their district heads, and go into the discussion as fully with them as I did at our meeting, so that they might fully appreciate and understand the rights of the employees, as set out by the law, and unfair labor practices as set out for the employer, and that I wanted that Act to be fully and completely understood by our organization; that it was our policy to observe the Act to the letter, and in spirit, and that I wanted no question in anybody's mind about the Company's policy in that matter, and for that reason that I had brought them all into my conference in order that they might be
529 impressed by me with the Company's policy and what was expected of them; and that they would carry the message through their organization.

Q. To the employe body?—A. To their entire organization, the supervisory organization and through the supervisory organization to the employe body, as a whole.

Q. I believe you also said something to that meeting about discontinuing paying the expenses of the existing Association, did you not?—A. Yes, that was very definitely understood. That was one thing we could read very clearly in it, because it stated very definitely that we could not contribute financial or other support to it, and that generally, of course, we stressed, and there could have been no misunderstanding in anybody's mind about that.

Q. Mr. Warren, from that time to the present, so far as your own information and observation goes, has or has not the Company adhered to the policy you then stated?—A. Absolutely.

Q. There was at that time a memorandum undertaking to interpret certain features of the Wagner Act to that meeting, was there not?—A. Yes.

Q. Did that memorandum represent the best judgment of
530 your group at that time as to what the Act meant?—A. That was the best judgment of my staff, including, of course, our General Counsel, and was prepared, as I recall it, almost immediately following our morning discussion on July 16,

and was distributed through the organization some few days later.

Mr. MARION SMITH. That has been introduced, Mr. Examiner, and I am not introducing it again.

Q. There is also in the record another memorandum "Wagner Bill Interpretation Revised January, 1937," and another one, "Revised April, 1937." Do those represent further developments of the best thought you had on the subject of what the Act meant?—

A. They did.

Q. In other words, you were trying to obey the law as far as you could find out what it was?—A. We were following it very carefully, and as things came to our attention, that might seem to be incorrect, we corrected those things very quickly, and by 1937, the last memorandum, we felt that we had had the benefit of Labor Board decisions and Court decisions, perhaps, and the law had been functioning over a period long enough that we could arrive at a much more intelligent interpretation than we had, perhaps, in the beginning by the Board itself.

Q. In other words, as the law was judicially interpreted, 531 you followed the interpretations so far as you knew?—A. We did.

Q. Phand you a letter dated February 10, 1941, and addressed to Southern Bell Telephone and Telegraph Company, attention Mr. J. E. Warren, president, and signed by the General Executive Board of the Southern Association of Bell Employees. Did you receive that letter?—A. Yes.

Mr. MARION SMITH. I offer that as Respondent's Exhibit 4. (Discussion off the record.)

Trial Examiner HEKTOEN. Do you have any objection, Mr. Woods?

Mr. Woods. An objection on the relevancy, that is all.

Trial Examiner HEKTOEN. You have none?

Mr. BRANCH. No, sir.

Trial Examiner HEKTOEN. It will be admitted.

(The Document above referred to was marked "Respondent's Exhibit 4" and received in evidence.)

By Mr. MARION SMITH:

Q. I hand you a carbon of a letter dated February 11, 1941, from the Southern Bell Telephone and Telegraph Company, by you as president, to the Southern Association of Bell Telephone Employees. Is that a copy of your answer to that letter?—A. Yes, I wrote the letter.

Mr. MARION SMITH. I offer it as Respondent's Exhibit 5. 532 Mr. Woods. The same objection.

Trial Examiner HEKTOEN. Same ruling.

(Thereupon, the document above referred to was marked "Respondent's Exhibit 5" in evidence.)

By Mr. MARION SMITH:

Q. When you received that letter, what steps did you take, Mr. Warren?—A. I immediately called my staff and legal counsel, and we discussed the matter in full, and agreed upon that reply which I made, after the meeting with the staff and counsel.

Q. I hand you copy of a letter addressed to General Offices, State Heads, District Heads, General and Staff Heads, and signed J. E. Warren, President, which is dated February 11. Did you also agree on sending out that letter?—A. Yes, sir, that was agreed upon at the time, and the letter was prepared immediately following the conference.

Q. And that letter actually went out to the department heads that are specified on it?

Mr. MARION SMITH. I offer that letter as Respondent's Exhibit 6.

Mr. WOODS. Mr. Examiner, I just don't quite see the purpose of this material. Apparently what it goes to show is that the Association, in view of the pendency of the charges, decided it would not bargain with the Company any more, and the Company agreed.

I cannot see where it has any relevancy here.

533 Mr. MARION SMITH. May I state the relevancy?

Trial Examiner HEKTOEN. Yes.

Mr. MARION SMITH. This correspondence and the action taken thereunder shows a break of the most decided and clear-cut character. The Association itself in that correspondence undertook to break the relationship until it could obtain again authority from a majority of the employees. On receipt of that, the Company advised all of its offices that there was this contest going on, and that they must maintain an attitude of absolute neutrality. The Company also posted on the bulletin board, a bulletin board notice, that I am coming to next, and whatever balloting or rejoining the Association did have after that time was after this complete notice to the entire body as to the absolute freedom of the employees and the neutrality of the company. It seems to me to be a matter of the utmost moment.

Mr. WOODS. Mr. Examiner, if the Association has not been disestablished, and has existed illegally, whether it attempted to purge itself in the last fifteen days before the hearing, certainly is not going to make the matter moot under the Board's decision.

Trial Examiner HEKTOEN. Those matters that you are going into now, Mr. Smith, go to the last paragraph in your answer?

Mr. MARION SMITH. Yes.

534 Trial Examiner HEKTOEN. I think under that they will be received, and the ruling will be the same as to Respondent's Exhibit 6. It will be admitted.

(Thereupon, the document above referred to was marked "Respondent's Exhibit 6" and received in evidence.)

By Mr. MARION SMITH:

Q. This letter refers to the enclosure of a copy of a letter to you of February 10 and a letter from the Company of February 11. Are these the two letters that have just previously been identified?—A. They are.

Q. And it also refers to the enclosure of a notice to be posted on the bulletin board of all buildings owned by the Company. Is the document I now hand you a copy of that notice?—A. It is.

Q. Owned or leased by the Company?—A. All buildings in which we operate are owned or leased, and on all bulletin boards, and if a bulletin board is not available, in any building, to post it in a conspicuous place in the building.

Mr. MARION SMITH. I offer this as Respondent's Exhibit 7.

Trial Examiner HEKTOEN. I think that is the same one in evidence as a part of your answer, Exhibit "A."

535 Mr. MARION SMITH. It is the one attached to our answer. Whether that puts it in evidence or not, I don't know.

Trial Examiner HEKTOEN. I think that puts it in evidence.

Mr. MARION SMITH. May the record also show that this printed notice is a copy of the notice attached to Respondent's answer?

Trial Examiner HEKTOEN. Yes.

Mr. MARION SMITH. I offer, under agreement with Mr. Woods, as Respondent's Exhibit 7, a statement of the number of places in which that bulletin board notice was posted, and I assume you mean posted directly after that notice went out.

Mr. Woods. Yes.

Mr. MARION SMITH. It is 2173 places, and obviously, I could not bring that many witnesses here to prove the posting.

(Thereupon, document above referred to was marked "Respondent's Exhibit 7" and received in evidence.)

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538 Cross-examination by Mr. Woods:

539 Q. Mr. Warren, you stated at the July 16 conference that you called all of the staff to explain the meaning of the Wagner Labor Relations Act, and you told all the persons present that the Company representatives could not advise with employees on any matters involving their affiliation with the labor organization; is that correct?—A. Could not advise with them.

Q. In other words, the supervisory personnel could not advise employees what to do about joining or not joining of a labor organization?—A. That is right.

Q. But then, at the same time, at that same conference, didn't you also give them the interpretations of the Wagner Bill which are contained in that July 20 memorandum?—A. The memorandum was prepared as a result of or following the discussion. I am not sure whether it was delivered to them after the meeting or while they were still there.

Q. My question perhaps was not clear. What I meant was did you tell the persons present in that conference orally the substance of the opinions which are embodied in that written memorandum of July 20?—A. I think that would be generally true, as well as I can remember.

Q. So that, in fact, the supervisors of the Company were to advise the officers of the Association what they could do to make their organization legal; is that right?—A. No; I had no such consciousness.

Q. Well, in that memorandum of July 20, Mr. Warren, you make no reference as to how they could organize another union, do you?—A. No.

Q. You made no suggestion to them about their right to belong to another labor organization if they so desired, did you?—A. In the memorandum?

Q. Yes; of July 20.—A. I would like to see that.

Mr. Woods. (That is Board's Exhibit 9 [paper handed to witness].)

Q. The question is, you did not, in any written memorandum, advise the employees that they had the right to join another labor organization, did you?—A. No; there was nothing in writing prepared. We had a series of meetings, open discussions, but I have no recollection of the sending out of any written instructions or written interpretations, other than the memorandum that was prepared following the meeting.

Q. Now, that memorandum only refers to the then existing practices with reference to the Association, doesn't it?—A. Certain specific things, such as the payment of salaries to the Association officers while engaged in conferring with Management; that the Company could not pay the traveling expenses, the traveling expenses of the Association, for instance. Those were questions in their minds which we undertook to clarify as well as we could.

Q. For the benefit of both the staff members and officers of the Association; isn't that right?—A. Specifically, it was prepared, of course, for the guidance of the staff and its officers, supervisory employees.

Q. The Association was never dissolved, was it, by the company?—A. No; I had no knowledge of any dissolution.

Q. The company has never taken steps toward its dissolution?—A. No, sir.

Q. So far as you are concerned, the Association was in continuous operation from 1919 down to the present time; is that correct?—A. There has been a continuing Association, in a general way; there was a break, apparently, at the time that the Association representatives gathered together and adopted a new constitution, and during the period, whether it was a technical break or not, I have no knowledge of just what went on at that time; I have no knowledge of the time when there wasn't an Association in some form, representing the employee body.

Q. Now, according to the exhibits here, a contract was executed between the Association and the company, which you signed on September 3, 1935—do you recall that, Mr. Warren?—A. Yes, I recall it.

Q. And also, according to some of the testimony, it has been testified that although that contract was signed on September 3, 1935, the Association did not consider that it became effective until February 1, 1936?—A. That was the understanding that I had from Mr. Dumas at the time that he submitted this contract which had been agreed upon between himself and the committee, that it was completing their set-up, and would be effective with the effective date of the new constitution, or, rather, at the time of the ratification of the constitution.

Q. Now, Mr. Warren, do you know whether or not between September 3, 1935, and February 1, 1936, there was any bargaining carried on between representatives of the company and representatives of the Association?—A. I don't know; I am sure as I can be that there were no general bargaining relations between the general officers of the company and the Association.

Q. You don't know whether the Locals all around the system were refraining from taking up grievances with the management in the usual procedure?—A. No; I haven't knowledge on that.

Q. Was it your practice as the president of the Southern Bell Telephone and Telegraph Company to sign a contract to become operative at some indefinite time in the future, without stating that condition in the contract at the time that it was signed?

A. That is not unusual; we execute many contracts, of course, that are operative in the future.

Q. When you execute a contract that does not become effective and binding upon the date of its execution, as a matter of business practice, you show that in the contract, don't you?—

A. We enter into many contracts, such as leases and many at-

tachments to other property that is not effective until the act is completed.

Q. That is correct, but have you ever entered into such a contract with an oral understanding as to when the contract will become operative?—A. I can't say; I can't, at the moment, answer it yes or no—I can't at the moment, answer yes or not to that question.

Q. What was the nature of that understanding, and by whom was it communicated to you?—A. Mr. Dumas prepared this contract and brought it to me following the General Assembly, the Association Assembly Meeting, at which time they had passed their constitution.

He explained to me that they had been—that the General Assembly had adjourned, that they were submitting their constitution to their membership or Locals, for ratification; that they were insisting that this contract be executed so as to provide the grounds for operations at such time as it became legalized through ratification. There was no contest in anyone's mind at the 545 time, and it seemed to me to be not an unreasonable request, and at the time, as well as I can recall it, I didn't give very much consideration to the fact that it was not definitely nailed down to a specific time or date.

It was my understanding it would be operative as soon as the Association's constitution was ratified; it was ratified, and, of course, if it had not been ratified, the contract would have been inoperative, in any event.

Q. In your answer, you stated that Mr. Dumas gave you that information?—A. Yes, sir.

Q. At the time of the actual signing of the contract, were all the parties present, or was it signed by you?—A. I can't say, I can't remember; I tried to remember whether or not Mr. Dumas was there, but I can't remember just who might have been in the office at the time.

Q. But, at the time that you signed it, at least, some representatives of the Association were present, were they not?—A. As I recall it, Mr. Weil, the president of the Association, was in conference with me at the time that this was signed [indicating].

Q. Do you recall whether you and Mr. Weil had any discussion about the time that the contract was to become effective?—A. I 546 just can't remember the details of the discussion of the matter, just what took place—frankly, I just can't remember that well.

Q. You do remember the information that Mr. Dumas gave you on that score?—A. Yes, sir; I remember very clearly that Mr. Dumas had discussed this contract with me during this period

of negotiation with the committee, although beyond that, that they were trying to work out a contract, I have no knowledge of what went on in the committee discussion, but on the day after Labor Day, as I recall it, perhaps the day after the General Assembly had adjourned; Mr. Dumas did give me a copy that he said that they had reached an agreement on. Later, Mr. Weil came with a copy, and as I recall, the stage setting at the moment, there naturally was some discussion, but just what went on back and forth, I couldn't possibly remember, but I did execute it at that time.

Q. Do you regard it as a rather substantial form of support or not, that a labor organization should be able to show to the employees a signed contract with the company before the labor organization actually comes into existence? Don't you think that has some influence on the employees in the selection of a bargaining agent?—A. I don't think so.

Q. You are now bargaining again with the Association, are you not, after an exchange of letters?—A. Yes, sir, we have; after they furnished proof, I notified the organization in my letter of probably March 6 that we were again in position to bargain, and so instructed them.

Q. Has there been any bargaining?—A. Yes; there has been bargaining since that date.

Q. Between yourself and representatives?—A. Between myself and representatives, and between the general department managers and their boards, and I just happened to know of one or two cases between division heads and the—

Q. You have not yet negotiated the new joint agreement, however, have you?—A. No, sir.

Q. Have certain questions been sent to you in connection with that new joint agreement, yet, or not?—A. I don't recall any question of new joint agreements—

Q. Having been raised as yet this year?—A. I don't recall that it has.

Q. Do you regard the company as at present operating under a contract with the Association, or not?—A. I do.

Q. What contract is that?—A. I understand that we are operating with them under the contract that was signed—that last contract that was signed—I don't know—

Q. That is the 1940 contract?—A. I suppose it was the 1940 contract.

Q. It was signed in July, I think, of 1940?—A. I don't remember; I don't remember the date. That should be a matter of record.

Q. At any rate, the 1940 contract is the one that you consider still to be outstanding, and under which the company and the

Association are working today; is that right?—A. I would consider the last contract signed, the contract under which we are operating, but when it was signed, I don't know.

Q. Then you do not regard the Association's letter of February 10th to you as amounting to a cancellation of their contract?—

A. I did not consider any cancellation of their contract.

Q. At any rate, there has been no re-execution of a contract if there was a cancellation?—A. That was not given consideration.

Q. My question is—there has been no re-execution?—A. I have not been asked to execute a contract in that period.

Q. Going back to this contract business in 1935—if I understood your testimony correctly, you said that you didn't believe that it was active support of a union to give a contract to it before the contract could become effective—is that your testimony? And before the organization itself was
549 organized?—A. I don't think that the contract that we executed exercised any influence whatsoever over our employees by reason of our doing so.

Q. You would not be willing to give the IBEW a contract with your company before it had any members among your employees, would you?—A. No, sir.

Q. Then what was your reason, then, for giving that contract to the Association before it had actually become an organization?—A. Of course, there was no contest at the time, there was nothing to cause me to give serious thought to those matters. Should it occur now, I certainly would be fully conscious of it—

Q. As a matter of fact—

Mr. MARION SMITH. Pardon me, just a moment. I don't think he had finished his answer. Had you finished your answer, Mr. Warren?

The WITNESS. Yes, sir.

Mr. MARION SMITH. Pardon me, Mr. Woods.

By Mr. Woods:

Q. As a matter of fact, Mr. Warren, isn't the real situation this: The Association has continued as one organization since 1919, and the contract of September 3, 1935 was considered
550 by you to have gone into effect on the date of its execution, and so treated by the company.

Mr. MARION SMITH. I think that question calls for a conclusion, and if he answered it, we wouldn't be bound by any such opinion, if it is given.

Mr. Woods, I am asking the witness if he treated that contract of September 3, 1935 as effective from the date of its execution—whether it was actually effective, or not.

Trial Examiner HEKTOEN. Can you answer the question?

The WITNESS. I considered the contract to be effective as of the time and date that the new constitution was ratified. That was our verbal understanding. It was not so written into the contract, as I now discover.

By Mr. Woods:

Q. Didn't you treat that contract, however, in your dealings with the Association, as one going into effect upon the date of its execution; and governing the employer's relation with the employees—and whatever your personal understanding may have been, or whatever the law might have been, that is something about which your conclusion would not be helpful, but how did you treat that contract from September 3rd, on?—A. Well, frankly, there was nothing to bring up the question of the contract, so far as I have knowledge, between that date and February 1936.

Q. You were checking off dues during that time?—A. Dues were being deducted during a part of that period; 551 when that started, I am not sure, but I think that it was in the fall of 1935.

Q. The records show that?—A. The records show that.

Q. And you were making certain arrangements with the Association on the matter of bargaining, prior to the time that it actually set itself up as a labor organization, isn't that right?—

A. We had discussions and negotiations with the representatives of the employees through that period, if any occasion arose for such, whether they were purely bargaining contacts, I have no knowledge about that. But if the representatives of the employees brought matters to our attention during that period from September, 1935 to February, 1936, our organization, the responsible supervisory heads in our organization, I would assume, did have discussions with them on the matters which were brought to them for consideration or discussion.

Q. As a matter of fact, did you personally give Mr. Howard Askew, Mr. Howard M. Askew a specific assurance that the company would continue to bargain with the Association representatives throughout this period, although it was eliminating its financial support?—A. I don't recall that I specifically gave him any such assurances. I have no recollection of having done it.

Q. You do recall having told him that the problems 552 would continue to be handled with the Local Management representatives as they had in the past?—A. I might have. I don't recall.

. . .

By Mr. BRANCH:

Q. You were asked about the matter of deducting dues during that period, for some time during that period, before February 1, 1936. Wasn't that done by virtue of individual orders signed by employees, requesting that deductions be made, or are you familiar with that?—A. I am familiar with the fact that we made no dues deductions during that period, except on the order of the individual employees, properly signed; the form used, I am not familiar with, but it is my impression that it was a card, or, at any rate, it was an individual signature, an order for each employee that the deduction was made for.

Q. There was nothing in this September contract that provided for that to be done?—A. No, sir.

By Mr. Woods:

Q. But the arrangements for doing that were worked out through negotiations with the Association's officers, were they not?—
553 A. I would assume it was, but I do not have first-hand knowledge of how that came into the picture.

* * *

Redirect examination by Mr. MARION SMITH:

Q. Making deductions from an employee's pay on his order, is quite a common practice with the company, is it not?—A. Yes, sir; that is a common practice; we make deductions for several different items.

Q. On the order of the employee?—A. Yes, sir.

554 Q. If he gives you the order, you carry it out?—A. That is right.

* * *

RECROSS EXAMINATION

* * *

By Mr. Woods:

Q. Do you charge other people from whose salaries deductions are made, for the cost of making the deductions?—A. It is my understanding that the cost of making the deductions was charged to the employees' Association, and paid for by them.

Q. That is correct.—A. And not by the individual.

Q. That is correct; but as to other deductions that might be made, do you make a charge for making those deductions?—A. No sir; we do not.

555 Q. For other business than the Association?—A. Other than the Association, we do not—such as for life insurance and hospitalization and what have you?

* * *

G. D. GARDNER, a witness called by and on behalf of the Respondent, being first duly sworn, testified as follows:

Direct examination by Mr. MARION SMITH:

Q. Please state your name for the record?—A. G. D. Gardner.

Q. What is your connection with the company?—A. General traffic manager.

Q. That is the head of the traffic department?—A. Yes, sir.

Q. You report immediately to Mr. Dumas?—A. Yes, sir.

Q. And the division traffic managers are under you?—A. That is right.

556 Q. What position did you hold in July, 1935?—A. I was Georgia traffic superintendent.

Q. That is the head of the traffic department in Georgia?—A. Yes, sir.

Q. As such, did you attend the conference that Mr. Warren held on July 16, 1935?—A. Yes, sir.

Mr. WOODS. Mr. Examiner, I offer at this time to stipulate that this witness and any other witnesses whom counsel may care to designate, if asked substantially the same questions with reference to the remarks and statements made by Mr. Warren at the July 16 conference, would testify to substantially the same facts as Judge Kerr and Mr. Warren have testified, as to that conference.

Mr. MARION SMITH. Thank you. I won't ask the questions on that then. We may be able to include this by stipulation after we have dealt with several instances of it.

By Mr. MARION SMITH:

Q. What did you do toward carrying out those directions of Mr. Warren with regard to communicating the company's position on this matter throughout your organization?—A. In Georgia, at that time, I had five district traffic managers—two of them located in Atlanta, and one in Valdosta, and one in Savannah and one in Macon.

557 On the day following Mr. Warren's meeting, I contacted the two district traffic managers located in Atlanta, in person, and went over with them the subject matter of Mr. Warren's conference, and discussed with them the provisions of the Wagner Act, particularly as to—

Q. I think that we can eliminate some of that detail. Did you repeat to them substantially what Mr. Warren had said in his meeting, on the subject?—A. Yes, sir; I did.

Mr. MARION SMITH. If I may ask that type of question, I can shorten it considerably.

The WITNESS. And as to the three district traffic managers located out of Atlanta at the three places I have named, I contracted

them over the telephone, outlining to them the substance of the conference, Mr. Warren's remarks and his instructions to us.

By Mr. MARION SMITH:

Q. What directions did you give them in regard to communicating to the employee body on that subject?—

558 A. I told them to be sure that their chief operators in all of their offices understood those instructions and that they be imparted through the chief operators to the employee body generally.

Q. And the instructions to be imparted were substantially the substance of Mr. Warren's remarks as they have been related?—

A. Yes, sir.

Q. Have you any way to know whether your instructions were carried out?—A. I was on my vacation at the time—I was called in to attend this conference, and I remained in Atlanta one day after the conference to make my first contact and give these instructions out to the District Traffic Managers.

After the expiration of my vacation, I, being in Jacksonville, Florida, at that time, I came up into South Georgia, and there contacted, in person, the South Georgia District Traffic Manager and went with him to certain of his offices and assured myself that he was carrying out my instructions.

Later, in August, I went through the same procedure as to the Savannah District; and as to the Macon District by going to those two districts headquarters.

Between those visits, I again contacted the District Traffic Manager in Atlanta, Mr. Follwell, and the District Traffic Manager for the outlying North Georgia Territory, other than 559 Atlanta, who was Mr. C. N. Robinson, and they assured me that they were carrying out the instructions.

Q. You satisfied yourself that the instructions were being carried out?—A. Yes, sir.

Q. And from that time to the present date, has the policy as outlined by Mr. Warren on that subject been carried out?—A. Yes, sir.

Q. Did you ever have occasion to give Mr. Mason, the District Traffic Manager in Shreveport, any special instructions lately on the subject, and if so, tell me what happened, and what you did?—

A. I was in Louisiana on business for my department of the Company's operations in the early part of December 1940. I saw Mr. Mason at the time of my visit to Louisiana in early December.

Q. You were traveling on the business of your department?—

A. Yes, sir. At that time, I had been informed that efforts were being made to organize a rival labor organization in Shreveport,

and I again reviewed with Mr. Mason the provisions of the Wagner Act, explaining to him that he and his Management associates were to be guided by these instructions which they had previously received from me in person.

Q. And the substance of that was not to say anything to anybody about it?—A. Yes, sir.

561

Cross-examination by Mr. Woods:

Q. What was the particular occasion in December 1940 for your reiteration of the Company's policy under the Wagner Act to Mr. Mason?—A. I had been informed that a rival labor organization was undertaking to organize the traffic employees in Shreveport. I wished to be assured that Mr. Mason definitely understood the Company's policy that we were undertaking to comply in all respects with the provisions of the Wagner Act.

J. G. BRADBURY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

562

DIRECT EXAMINATION

By Mr. MARION SMITH:

Q. Now, Mr. Bradbury, will you please tell me just what you did toward carrying the instructions that Mr. Warren gave to the employees that were in your department at that time?—A. Well, Mr. Smith, at that time, I had no organization, no people reporting immediately to me. If you will let me give a little history to that to clarify it, I think it might be helpful.

Q. Yes; go ahead and explain it.—A. As the situation existed then, I had been on the General Plant Engineer's job just for a short while. The position had just been set up, and I came in, and I was the first party to fill that place. In September 1935, the first of September, I was transferred to Florida, with headquarters at Jacksonville.

Q. In what capacity?—A. As Florida Plant Superintendent.

Q. Yes, sir.—A. And in that capacity, of course, I had the entire plant organization for the State of Florida under my jurisdiction.

My predecessor in Florida had been sick, was seriously ill for quite some months before I went down there, and one of the staff members of the Florida plant organization attended the conference which Mr. Warren held in July—I assume the 16th is the date—I don't remember the exact date—

Q. Yes.—A. This whole matter of the rights of employes under the Wagner Act had been so thoroughly instilled in me, when I went to Florida, I felt that it was incumbent upon me to get over to those people there as quickly as possible, the provisions of the Wagner Act.

564 Q. Was it because you felt your predecessor's illness had prevented him from doing it?—A. I felt that, Mr. Smith,

yes.

Q. Well, what did you do, then, in Florida?—A. Shortly after going there—I might give you this little sidelight—I rode into Florida on a hurricane, and I was pretty much engrossed in repairing the hurricane damage. Shortly after that, I went around to meet as many of the plant people that I could. In our department it is rather common practice to have group meetings of our people when a major supervisor comes around. We talk about service objectives. We talk about trouble results, and we talk about a lot of things pertaining to the business. It was my purpose in that meeting to develop not only talks about those things, and to get acquainted with the force, but to tell them something about this Wagner Act which was pretty heavy in my mind.

Q. Now, did you pass the information on?—A. I passed that information on to a great number of people in Florida personally.

Q. And did you have some meetings with the employes?—A. Yes, I did, Mr. Smith. I could not tell you how many people attended those meetings, and I could not give you the dates, because they did not mean anything to me then, but I am very positive about those meetings, and there was one thing that stood out
565 to me on them, we talked about the Wagner Act, and following those meetings that I had, shortly after going there, I talked about it to them individually and collectively at other times, and sometime subsequent to 1935, again I couldn't tell you the date, I was asked to talk to quite a bunch of people about the Wagner Act.

Q. Employes you mean?—A. Employes, yes, and I talked—I definitely felt that that was a question that should be handled very properly, very carefully, and I prepared a memorandum and read it to groups of people.

. . .

575

Stipulation

Mr. MARION SMITH. It is stipulated that in July, 1935, the Respondent had Division Managers and Superintendents in various departments of the Divisions, and District Managers and Superintendents in various departments of the Districts, to the aggregate number of in excess of 120. It is stipulated that if

these men were called as witnesses they would testify that promptly after Mr. Warren's meeting of July 16, 1935, the substance of Mr. Warren's statement as to the Wagner Act, and as to the policy of the Company with respect to that Act as shown in

Mr. Warren's testimony in this record, was by such Division 576 and District Officers communicated to their subordinates and to the general body of employees of the Company. It is further stipulated that they would also testify that so far as each one's individual information went the policy so stated had not been departed from. It is stipulated that the record in this case may be considered as if such persons had so testified herein and with the same effect as if they had so testified.

Mr. Woods. That is agreeable, Mr. Examiner.

* * *

580

Colloquy

Trial Examiner HEKTOEN. In order to keep the record straight, I might state that Respondent's Exhibit No. 1 consists of two pages, and not three, and it is the last paragraph of that exhibit to which you have reference. I think that there is already examination concerning it and cross-examination in the record.

581 Mr. MARION SMITH. There was, and it was in connection with that examination that I am making this motion, and I don't know whether that examination is intelligible without this document remaining in the record as an exhibit.

Trial Examiner HEKTOEN. What about it, Mr. Woods?

Mr. Woods. I have no objection to it remaining in the record provided that it remains there under the original reservation at the time relative to the information contained in this statement being facts, and so forth.

Trial Examiner HEKTOEN. I think that you have made your position perfectly clear, Mr. Woods, as to the conclusions contained on page 1.

Mr. Woods. Yes, sir.

Mr. MARION SMITH. Yes, sir; I think so.

Trial Examiner HEKTOEN. Then, the order striking Respondent's Exhibit No. 1 for the record is vacated, and the exhibit Respondent's Exhibit No. 1 remains in evidence.

582 Mrs. VIVIAN B. McCaIN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MARION SMITH:

Q. Mrs. McCain, won't you do your best, now, to lift up your voice so I can hear you back here?—A. Yes, I will.

Q. Your name is Mrs. Vivian McCain?—A. Yes.

Q. You work for the Telephone Company at the Shreveport Exchange, don't you?—A. I do.

Q. What position or positions, or jobs, do you hold?—A. Well, I have three titles. I do the work of matron, I keep the second floor clean, I have three maids under me, and then I do the employment work and I do the nursing, the practical nursing.

Q. Now, when you say you do employment work, what do you mean you do?—A. Well, I take the applications and I select the girls for the traffic manager to decide who should be called in, and we talk it over, and then decide, and we call in ten for tests to see if they can do the work, and I meet them at the door and take them to the room they are to work, where there is a matron's desk, and that is all.

583 Q. The traffic manager makes the final decision?—A. He makes the test and decides. Sometimes we talk over a second time who shall come in, and we employ three at a time.

Q. Now, you know Mrs. Ina Burrows, do you not?—A. Yes, I do.

Q. I want to direct your attention to a time two and a half or three weeks ago, when you and Mrs. Burrows had a talk in the rest room there. Do you remember the time I am talking about?—A. Yes, I do.

Q. Now, won't you just tell us what happened then, Mrs. McCain?—A. Well, I walked into the rest room and they were voting downstairs for the chairman, they were going to change their chairman and vice-chairman.

Q. Vice-chairman and chairman of what?—A. Of the Association.

Q. Yes.—A. And they were voting on that downstairs, and, as I walked into the rest room, she said, "I am going to vote. I don't care who tries to keep me from it. I pay my dues, and I have a right to vote," and I said, "Well, who is trying to keep you from voting?" I don't remember that she answered. And,

584 then I said, referring to the voting of the chairman and the vice-chairman, "Which side are you on?" meaning, she knew what I meant, "Who are you voting for?" I didn't say "Voting," but I asked her which side she was on, and that was all that was said.

Q. Well, was anything said about the Wagner Act?—A. No, nothing.

Q. Who was present?—A. Well, I believe Mrs. Waits was there. I don't remember seeing her, and I don't remember anybody else.

Mr. MARION SMITH. That is all.

Mr. BRANCH. I have no questions.

Cross-examination by Mr. Woods:

Q. Mrs. McCain, I understand your duties, in connection with employment, are those of advising and consulting with the traffic manager?—A. Well, I would say that, and I have done welfare work, you know.

Q. And you are still doing that?—A. Yes.

Q. You have your own office?—A. Yes.

Q. And on the outside of that office, don't you have the designation of "Employment Supervisor"?—A. Yes.

585 Q. That is your title?—A. Yes.

Q. Mrs. Cain, you are also a member of the Association?—A. No, I am not.

Q. Have you ever been a member of it?—A. Well, I was when I first came into the company, but after I grew to be a supervisor, I didn't even attend the meetings.

Q. You are not eligible for membership?—A. No.

Q. So that your duties are definitely supervisory?—A. Yes.

Q. Mrs. McCain, at the time that you had this conversation with Mrs. Burrows, you knew there was a rather intense rivalry between the A. F. of L. and the Association?—A. I did, about the chairman and the vice-chairman, but I did not know until I went on duty Monday, there, that they were going to make a change.

Mr. MARION SMITH. I think she misunderstood you.

By Mr. Woods:

Q. My question was—see if this is the one you have in mind—at the time you had this conversation with Mrs. Burrows, two and a half or three weeks ago, you knew, then, there was a rather intense rivalry between the A. F. of L. and the Association?—A. Well, I knew there was some rivalry there, but I did not know who it was between, or anything about it, because I had been instructed not to influence the girls, one way or another.

586 Q. Well, assuming that you made no effort to influence the girls, you knew, from the girls' conversation, generally, that there was this question of two unions, didn't you?—A. Well, now, in my thoughts, as to the union, I had no connection with it, and I had nothing at all to do about it, one way or another.

Q. You knew a Federal Investigator from the Labor Board had been in Shreveport making an investigation, did you not?—A. After he had been there; yes.

Q. So that you knew there was some question of competition or rivalry between the union affiliated with the American Federation of Labor, and the Local of the Association?—A. Well, I knew there was.

Q. And you knew too that Mrs. Burrows was among a group of women who had openly announced her membership in the A. F. of L.?—A. I did not.

Q. Now, this conversation occurred in the rest room, did it not?—A. Yes.

Q. The ladies there go in and out of the rest room frequently?—A. They do some time during their recreation period.

Q. And when they are in there, they frequently talk about
587 matters that concern them from day to day?—A. Well, I suppose they do. I am hardly ever in there more than ten minutes at a time. I did not hear much conversation one way or another. I knew very little about it.

Q. Well, you heard this discussion among the girls, which came up?—A. Well, she was just talking about the voting, that she was going to vote, and had paid her dues, and had the right to vote, when I walked in.

Q. Did she talk to you, or talk to who?—A. Yes, she was talking to me, and when I came in there, she was talking to the other girls in there. I don't remember who was there except Mrs. Waits.

Q. The girls were already in the rest room when you came in?—A. Yes, sir, they were in the rest room.

Q. Are you sure it was not the other way around, that you were in there and the girls came in?—A. No.

Q. Since this only happened two or three weeks ago, Mrs. McCain, maybe you can help us by trying to remember exactly how the conversation began?—A. Well, that is the way it began, she was talking to the girls about voting.

Q. When you walked up?—A. And I walked in.

Q. And as you walked in, you overheard her talking to
588 the girls?—A. Yes.

Q. And what is the first thing you remember hearing her say, in substance?—A. "I am going to vote. I pay my dues and I have a right to vote, and I am going to vote."

Q. And did you hear the rejoinder of the other girls, any of the other girls?—A. No, nobody said anything.

Q. She just made that statement, and nobody replied to it?—A. Yes.

Q. Except that you replied to it?—A. Yes.

Q. And you replied by asking her what side she was on?—A. Yes. I knew they were voting downstairs for chairman and vice-chairman. That is what I meant.

Q. You knew that Mrs. Bostick had resigned as chairman?—A. I did about an hour or two beforehand. I don't remember, really, that Mrs. Bostick was chairman. I knew that the chairman had resigned.

Q. Well, what were the two sides within the Association?—
A. Oh, it was the nominees downstairs.

Q. You mean they had more than one nominee for the office of chairman and vice-chairman, is that what you mean, Mrs. 589 McCain?—A. Yes, they did.

Q. Who were they?—A. I don't know. I don't even know their names.

Q. Well, if you don't know who the nominees were, how did you know which said was which?—A. Oh, I knew the girls. I didn't know which side was which. I was interested only in the girls who were running for vice-chairman and chairman.

Q. Well, as a matter of fact, so far as the Association is concerned, you really know there was two sides?—A. What do you mean by two sides?

Q. I am trying to find out what you mean?—A. I didn't mean anything. I asked Mrs. Burrows who she was going to vote for. I didn't say "Vote," I said, "Which side are you on?"

Q. Which side did you mean?—A. Well, I meant was she on the chairman that had been there, or the chairman that was to be elected.

Q. In other words, that was whether she was in favor of Mrs. Bostick who had resigned, or in favor of the nominees?—A. Or whoever had occupied that position.

Q. Before?—A. Yes.

* * *

590 Redirect examination by Mr. MARION SMITH:

Q. Would you mind stating your name for the record?—

A. Sixty years.

* * *

Mrs. MATTIE WAITS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MARION SMITH:

Q. Mrs. Waits, will you lift your voice as much as you can, so that we all can hear you?—A. Yes, sir.

Q. You work in the telephone exchange at Shreveport, do you not?—A. Yes.

Q. What do you do, Mrs. Waits?—A. Dial operator.

Q. You were present, or were you present two and a half to three weeks ago in the rest room, when a conversation took place between Mrs. Burrows and Mrs. McCain?—A. I was.

Q. Will you please tell us about it?—A. I don't know how 591 it started. It was going on when I went in there.

Q. Just start with the first thing you heard when you went in?—A. The first thing I heard was Mrs. McCain saying

something. Mrs. McCain said, "Well, what side are you on?" and Mrs. Burrows said, "Well, I am not on any side at all," and that is as much as I can remember hearing.

Q. Was there anything said about the Wagner Act?—A. There was not, not that I heard; not while I was in the room.

Q. Is that all you heard of it?—A. That is all I heard.

Mr. MARION SMITH. That is all.

Cross-examination by Mr. Woods:

Q. As a matter of fact, Mrs. Waits, you simply sort of passed by the conversation and overheard that much of it that went on?—

A. I was in there during the time.

Q. You did not hear the complete conversation?—A. No; I did not.

* * *

592 F. H. FRASUER, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MARION SMITH:

Q. Mr. Frasuer, what is your occupation?—A. Manager of the Hurt Building, Atlanta, Georgia.

Q. Are you connected—were you connected with the Hurt Building in 1935?—A. I was.

Q. Do you know the room in the Hurt Building known as 1717-A?—A. Yes; I am familiar with it.

Q. Well, about what sort of room is it?—A. Well, it is an inside room with no windows, no outside ventilation. It has a door and a transom, and there is a little natural ventilation to the roof, just one little bit of a grill.

Q. How big a room is it?—A. Approximately eight by ten.

Q. Are you familiar with the value of rental space in that building?—A. Yes, sir; I am.

Q. I will ask you whether or not, in 1935, or 1937, I believe it was, say, April 30, 1937, \$84 a year was a reasonable rental for that room?—A. Yes, sir; that was reasonable rental for that room.

* * *

604 Mrs. JANE H. WILKES, a witness recalled as a witness by and on behalf of the Intervener, the Southern Association of Bell Telephone Employees, having previously been sworn, testified further as follows:

* * *

DIRECT EXAMINATION

* * *

605 Q. Mrs. Wilkes, there has been some discussion here about the matter of the financing of the activities of the Association or the members in the period intervening between the August 1935, special meeting of the General Assembly and the ratification of the new Constitution as of February 1, 1936. Now, directing your attention to that, I want to ask you if you are familiar with this document headed "Resolution No. 114—A. Yes, sir; I am.

Mr. BRANCH. I will ask you, Mr. Reporter, to mark that document as Association's Exhibit No. 7 for identification.

(Thereupon, the document above referred to was marked "Association's Exhibit 7" for identification.)

By Mr. BRANCH:

Q. Please state the circumstances under which this resolution was prepared, and what was done in the way of sending it out?—

A. Well, we realized, Mr. Branch, at the special meeting that was called in Atlatnat, that the money that had been contributed by voluntary contribution would not be sufficient to carry us on until the new organization was established, and we had no provision for any other funds, and so the special meeting passed that resolution asking our members to pay into us either 5 cents a week or 10 cents a week dues. That was passed at the special meeting and was sent out immediately thereafter to the telephone employees.

606 Trial Examiner HEKTOEN. That special meeting was which one?

The WITNESS. August—

Trial Examiner HEKTOEN. Of the small committee?

The WITNESS. No, sir; of the large committee.

By Mr. BRANCH:

Q. Was this resolution sent out to the various localities to the group known as Locals of the old Association for action by them?—

A. Yes, sir; it was; it was sent out using the machinery of the old organization.

Q. And did you attend to sending them out?—A. Yes, sir; I did.

Q. Did you receive the resolutions after they had been acted on and sent back in?—A. Yes, sir; we prepared, at the same time that resolution was prepared, we prepared a form for our people to make their wishes known; those forms were returned to my office, and I believe they were the—carried the number of people that had voted on that resolution.

Q. The resolution itself contains the statement: "The provisions of this Resolution shall become effective if and when approved by a majority vote of a majority of the Locals, either by special or regular meetings or by canvassing their membership."

607 Was that result reached?—A. Yes, sir; it was.

608 Q. By referring to this document, which is marked Asso-
 609 ciation's Exhibit No. 8 for identification, consisting of sev-
 eral pages—I want to ask you what that is.—A. These are
 the minutes of a special committee that was elected by the em-
 ployes in at the special meeting to draw up the rules and regu-
 lations governing the administration of the funds of the Associa-
 tion until such time as the new order went into effect.

Q. Was that the temporary committee that was spoken of in
 this resolution that was to act on these financial matters during
 that period?—A. It is.

Q. And when did that temporary committee meet, Mrs.
 Wilkes?—A. October 25, 1935.

Q. Now, up to that time, had there been any arrangement made
 with the Management about collecting or taking out these dues
 of the members?—A. Management had agreed that if the new
 order went in and the collection of dues was established that they
 would grant to the employes the privilege of having that deduc-
 tion made on the pay roll.

Q. Had there been anything paid over to anyone by the Man-
 agement up to that time?—A. No, sir.

Q. Up to the time this committee met and organized and adopted
 these rules and regulations?—A. No, sir. The collection of dues
 was not in effect.

611 Q. The first deduction of dues started on November 1,
 1935, did it?

* * *

616 Cross-examination by Mr. Weems:

Q. Mrs. Wilkes, in answering one of the first questions
 put to you by Mr. Branch with reference to this dues reso-
 lution, you said you realized that the money collected by the fifty-
 cent contributions would not be sufficient to finance the affairs of
 the Association, and you decided on asking "Our members to pay
 in to us five or ten cents a week." What members were you refer-
 ring to?—A. I was hoping I said "Employees."

Q. Well, I have it recorded in shorthand "Our members."—A.
 My answer to you, then, must be, again—

Q. (Interposing.) Just a slip of the lip?—A. No; I would not
 say a slip of the lip, but we were illegally operating under an old
 machine.

Q. Well, now, while you were acting treasurer of the Southern
 Association of Bell Telephone Employees, did you maintain a bank
 account? Obviously you did, from these checks?—A. Yes,
 sir.

617 Q. In whose name was that bank account?—A. Jane H.
 Wilkes, Acting Treasurer.

Q. S. A. B. T. E., Southern Association of Bell Telephone Employees?—A. Yes.

Q. You did sign all checks as Acting Treasurer of the Southern Association of Bell Telephone Employees, did you not?—A. I believe I did.

Q. On that account?—A. Yes.

Q. Now, at the time of the approval of the constitution effective February 1, 1936, what happened to the funds of the illegal organization?—A. It was an illegal organization in the process of becoming legal, so I imagine that would be going to the—

Q. I don't want your imagination, Mrs. Wilkes. You were treasurer at that time, is that it, is that correct?—A. Yes, sir; I was acting treasurer.

Q. You testified quite in detail, on direct examination, regarding certain financial transactions?—A. Well, I was acting treasurer—

Q. My question is a simple one. I want you to tell us here what happened to the funds of the Association, that you had prior to the time, when you were acting treasurer; what happened to the funds you had on February 1, 1936?—A. The only change I can say is I assumed that account when I was legally permitted to do so as general secretary-treasurer. That is the only answer I can give you.

Q. Then, the funds became part of the funds that you had after the general assembly of February 1936; is that right?—A. Yes.

Q. There was no change in the bank account designation?—A. Except General Secretary-Treasurer, instead of acting treasurer.

Q. That is the only one?—A. So far as I can recall.

* * *

628

Re-cross-examination by Mr. Woods:

Q. At all times, Mrs. Wilkes, that bank account was kept in the name of yourself, whatever your title may have been, as an officer of the Southern Association of Bell Telephone Employees?—A. I don't believe you could say that Acting Treasurer was an officer, because there was no such office in the old order. I was serving there purely temporarily.

Q. Then, at all times, that bank account was kept either in your name as acting treasurer of the Southern Association of Bell Telephone Employees, or as General Secretary-Treasurer, or later as vice-president-treasurer?—A. Yes.

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* * *

CLIFFORD DENNIS, a witness called by and on behalf of the Intervener, Southern Association of Bell Telephone Employees, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. BRANCH:

Q. Mr. Dennis, you are general secretary-treasurer of the Association at this time?—A. Yes, sir.

Q. How long have you filled that position?—A. Since 1939.

Q. Did you succeed Mrs. Wilkes?—A. Yes.

Q. How long have you been connected with the Association, either the old Association or the reorganized Association, or both?—A. I have been a member since some time in 1928, of the old Association, and I was an officer, I held an office, a local office in the Old Association in 1934.

Q. What office did you hold?—A. I was vice-chairman and—vice-chairman of one of the Locals in 1934.

Q. What is your position with the company?—A. Assignment man.

Q. What?—A. Assignment man.

Q. What is that?—A. I work in the assignment office of the Telephone Company and assign telephone numbers, cable pairs, and facilities for placing telephones; for the installation of telephones.

Q. Do you have anyone working under you, or subject to your orders?—A. No, sir.

Q. Or do you have authority over any of the other employees?—A. No, sir.

Q. Were you active in the procedure leading up to the new constitution which was prepared in 1935, and that later went into effect on February 12, 1936?—A. I attended the August 30th session of the General Assembly in 1935.

Q. Were you a member of that Assembly?—A. I was general office representative, as a member of that session of the General Assembly.

Q. But you did not help to actually draft the first draft of that constitution?—A. No, sir; I didn't see it. My first connection, as far as the constitution was concerned, was when it was presented to the members of that session in the General Assembly, coming from the members of the small committee that met prior to the convening of that General Assembly, and it was presented to that group for adoption or rejection.

Q. In what form was it presented to the members of the General Assembly?—A. It was presented in mimeographed form.

Q. I mean, was it in the form of disconnected amendments, or was it in the form of a complete instrument?—A. It was presented to us in mimeographed form as a complete constitution.

Q. Well, that form in which it was presented, as I understand it, a copy of that was furnished to each member of the General Assembly?—A. That is correct, and we took each article of the

constitution, as it was proposed, and went through it. The constitution was thoroughly discussed by the members of the General Assembly, and then it was adopted in its entirety, as it was proposed, with any changes that were suggested by the members of the Assembly, as they took up each separate article of the proposed constitution from the small committee.

Q. Did you have any part, after that General Assembly, in this temporary arrangement for financing and keeping the employees together pending the ratification of that new constitution?—A. I was general office representative of the committee that met following the special session of the General Assembly to draft rules and regulations.

Q. You mean these temporary rules and regulations for handling the finances, pending—A. (interrupting.) Contingent upon the adoption of Resolution No. 1.

Q. You became general secretary-treasurer, I believe you said, in 1939?—A. Yes.

Q. Mention has been made here several times about a statement in the minutes to the effect—I forgot the number—referring to Board's Exhibit 28, which is the 1939 minutes, it starts out, "The 20th annual meeting of the General Assembly." Did you prepared those minutes yourself?—A. No, sir.

Q. Who prepared them?—A. Mrs. Wilkes prepared this one, the minutes of the 1939 General Assembly.

Q. Which are the first ones you prepared?—A. '40.

Q. Now, I notice, referring to Board's Exhibit 29 for 1940 it says, "Fifth annual meeting of the General Assembly." Is that the first one that you prepared?—A. Yes, sir.

Q. Now, was there any particular reason for that, Mr. Dennis?—A. That was in accordance with the revision the members of the 1940 General Assembly adopted in the preamble of our Constitution.

Q. Was there any particular object in mind in changing it? I mean had there been any complaint at any time about it, against the Association at that time, or was there any threat in connection with it?—A. No, that came as a recommendation from our attorney. Prior to 1939, the Association did not have the

services of an attorney. The members of the 1939 General Assembly adopted a resolution to the effect that the Association would secure the services of legal counsel to go over our Constitution and make any suggested changes that he might desire to recommend in the phraseology of the groupings of various sections in our Constitution and in his recommendations he recommended a change in our preamble to the effect, or to the organization date. He made some definite recommendation as to the date of organization of the Association.

Q. I again ask you if at that time there had been any sort of threat or any suggestion, or any complaint that was contemplated against the Association?—A. No; that recommendation by the members of the General Assembly, that we secure legal services, did not come out of any pending threat or investigation.

Q. When was the first time that any such threat was ever made, so far as it came to the attention of the Association?—A. Well, the first actual threat, I believe, was in November or December of 1940.

Mr. Woods. Mr. Examiner, I move to strike the word "threat." I think it gives the wrong impression in the record. It would be much better if we used "advised."

Trial Examiner HEKTOEN. Suppose you tell us what you mean by the word "threat."

The WITNESS. I was construing the word "threat" in 635 that connection, Mr., Examiner, as a probable threat of investigation.

Mr. BRANCH. I think I was unfortunate, probably, in the use of the word myself.

Trial Examiner HEKTOEN. He said he considered it as notice of an investigation.

Mr. BRANCH. Yesterday I used the word "rumor," and I was called down about it. I haven't got too good a vocabulary at my command, and I jumped at the word "threat."

Q. I will say any intimation of any charges or a complaint that might be made against the Association.—A. It was in December, about the middle of December 1940, we were notified that an investigator from our Regional Director's office of the Fifteenth Region in New Orleans would be in Shreveport, and desired to talk to certain of our officers who were in Shreveport at that time. That was the first notice or intimation that we had of any pending investigation of our Association by the National Labor Relations Board.

Q. Since you have been General Secretary and Treasurer of the Association, has there been any sort of financial assistance rendered to the Association by the Company?—A. Definitely no.

Q. Do you know of any way in which the Company has dominated or attempted to dominate the Association?—A. In no way whatsoever.

636 Q. How many members of the Association are there at the present time?—A. At the present time our membership is in excess of 17,500. I don't know the exact figure, but it is in excess of 17,500.

Q. I believe you had a check made this morning, at my request, as to the number of members at certain periods?—A. Yes.

Q. Give the number and the different dates that you have checked, or had the check made. You did not make it yourself, did you?—A. No; I did not make it, but I was in the office, headquarters office, at the time the figures were compiled.

Q. Can you yourself say that it is substantially correct?—A. I can certify to the correctness of the figures shown.

Q. Well, give the number.—A. As of February 18, 1941, our membership was 16,770.

Q. Now, let me stop you there. I think you got an earlier date. I think it would be better if you put in the earliest date first.—

A. As of December 1, 1940, we had 15,956 members. The next date that we have is the date that I just quoted the figure of 16,770.

Q. Don't you have a January date there?—A. I beg your pardon we do. If I may go back and repeat the record in chronological order—as of December 1, 1940, the membership was 15,956. As of 1-31-41, the membership was 16,335.

As of 2-18-41, the membership was 16,770.

As of 3-21-41, which was yesterday, the gross membership was 17,775, and it is estimated that we will have something like in the neighborhood of between 100 and 150 terminations to be worked against our check-off list as of that date, through February 21, I mean through March 21, 1941. That is the reason I stated that our membership, our present membership was in excess of 17,500 as of today. But, our gross membership, as of yesterday, was 17,775.

Q. Since this complaint—I don't want to use the word "threat" since the intimation that there might be a complaint, or since this investigation started, has the membership decreased or increased?—

A. No, it has substantially increased. I might refer to the figures again—

Trial Examiner HEKTOEN. I think that that is indicated.

Mr. BRANCH. What is that?

Trial Examiner HEKTOEN. I think that the chronology has described that sufficiently.

The WITNESS. It shows approximately a 2,000 gain.

* * *

638 Mr. BRANCH. Let me show you what I am talking about.

Here it is [referring to papers]. What I want to stipulate or prove is that, referring to Respondent's Exhibit 11, there was attached to that various letters and communications on the stationery of the Southern Association of Bell Telephone Employees from committees, the Executive Board and officers, to all members and to all local officers and local chairmen—

Trial Examiner HEKTOEN. To whomever they are addressed.

Mr. BRANCH. Yes; and they were actually sent out to those persons to whom they were addressed.

Mr. WOODS. That is quite satisfactory with me, Mr. Examiner, except, so that the stipulation might be a little clear, Exhibit 11 starts off with a letter from Seals & Pennington, certified public accountants, dated March 5, 1941, and there are various other documents here, and I would prefer to identify specifically the documents to which the stipulation refers.

Mr. BRANCH. I think that will make it clearer.

Mr. WOODS. The first one is a letter dated February 7, 1941. The second a letter dated February 10, 1941. The third one dated February 11, 1941. The fourth one February 12, 1941. The fifth February 17, 1941. The sixth February 18, 1941. Those are the ones I understand the stipulation refers to.

Trial Examiner HEKTOEN. And that they were sent out as the purport to have been.

641 Cross-Examination by Mr. Woods:

Q. Your duties as an assignment man, as I understand your description of them, are comprised chiefly of assigning work to operating men in the installation of telephones and matters of that sort?—A. It had to do with the assignments necessary to the installation of local telephones, in regard to the service order that comes through from the subscriber.

Q. By that, you don't mean that you have anything to do with the personnel?—A. No, sir.

Q. To whom that work, is assigned?—A. None whatsoever.

642 Q. It is an office function then?—A. Yes, sir; strictly.

650 Q. Do you regard it as necessary to give a certain organization a considerable amount of prestige among its employees, to permit it to meet on Company property, over organizations not so permitted to hold meetings on Company property?

Mr. MARION SMITH. I make this objection, that that implies one fact that has not been proved, and that is that some organization has not been permitted to meet on Company property, and there certainly is no proof of anything of that kind in the record.

651 Trial Examiner HEKTOEN. I think that is correct.

The WITNESS. May I answer?

Trial Examiner HEKTOEN. With that indication of agreement by everybody, you may answer.

The WITNESS. My answer would be no.

664

By Mr. Woods:

Q. Is there any specified time limit contained in the contract or joint agreement between the Association and the Company which became effective July 30, 1940? Is that contract to last a year or for any specified period of time?—A. It is for one year from date of signing which, in this case, would be one year from July 30, 1940.

Q. I think that is the date of it. Now, prior to this year, the contracts had not specified a time or duration, had they?—A. I don't recall that they did, other than a clause stipulating a cancellation.

Q. Upon 60 days notice?—A. By either side.

* * *

686

Redirect examination by Mr. Branch:

Q. I want to ask you about this matter of meeting on company property. What is the arrangement, the general arrangement that you have, Mr. Dennis?—A. In general, the practice, if a Local wants to hold a meeting on company property, the meeting is held, always, after working hours; that is, a Local meeting.

Q. Now, the arrangement for paying it?—A. You are referring there to the arrangements for the paying of it?

Q. Yes.—A. You did not ask that. That is what you are referring to?

Q. Yes.—A. The chairman of the Local or some designated officer of the Local arranges with some supervisory person or persons in a supervisory capacity, for the use of certain available space for the holding of the Local meeting. This supervisor, in turn, notifies the accounting department, giving them the Local number, the location and the date and the hours that the meeting was held. Then, the accounting department of the company bills us at the close of each month, giving us an itemization for the territory as to the meetings that were held.

Q. That don't quite answer my question. Don't you have a standing arrangement with a fixed schedule of charges?—

687 A. Yes, sir; we do.

Q. What is that?—A. I don't recall off hand what the rate is, Mr. Branch, but it is by hours, that is, as well as I recall now, it is \$1.50 for the first four hours, I believe or the first two hours, I will have to look at the contract, Mr. Branch, before I could tell you the definite figures on it, but it is based on an hourly rate.

Q. Whether it is a small meeting or a larger one?—A. Regardless of the space that we might use. Now, in certain localities, in most of the exchanges, where we do avail ourselves of that permission to use company premises for the holding of Local meet-

ings, with the understanding that we are to reimburse the company at a certain fixed rate for the use of the meeting space, and most of the exchanges throughout the territory, the only available space might be, well, for example, we may use the corner of some room that has been vacated, after working hours. The members attending the meeting will sit around in what chairs are available, or on desktops and the meeting will be convened in that manner.

Q. Those are just the meetings of the Locals?—A. That is the only meetings that we ever hold on company premises.

Q. As a rule, those meetings are held, really, at private residences?—A. In general, most of our Local meetings, a vast majority of our Local meetings, I dare say, at least 75 percent of our Local meetings, maybe better, are held off of company premises:

Q. Your larger meetings, general meetings, are always held off of company premises?—A. That is correct.

Q. Or meetings of your executive board?—A. All meetings of the General Executive Board, and the General Assembly, and our division and district meetings, they are all held off of company premises.

Q. The meetings that are held on the company premises are just the meetings of the Local at that particular point?—A. That is correct.

Q. And, as a rule, at some plant in comparatively small towns.—A. You will find that true, as I stated awhile ago, in possibly 75 per cent or better of the cases. The majority of them, I think, you will find hold them around in residences at night, and in the larger cities, they hold them around at the hotels.

Q. I don't think I asked you about where your general office is located now. Where is it?—A. In the Trust Company of Georgia Building, 231 Trust Company of Georgia Building.

Q. In Atlanta, Georgia?—A. Yes, sir; in Atlanta.

Q. You rent from that building?—A. Yes, sir.

712 C. M. CATE, a witness recalled by and on behalf of the Respondent, having been previously sworn, was examined and testified further as follows:

Direct examination by Mr. MARION SMITH:

Q. Mr. Cate, you have been identified as being in the accounting department of the Southern Bell Telephone and Telegraph Company?—A. Yes.

Q. Have you made a study on the basis of which you can compare the cost to the company of the space rented at times for em-

ployee meetings, employee Association meetings, with the charge under the contract that is made to the Association for the use of such space for such meetings?—A. Yes, sir; I have.

Mr. MARION SMITH. I am just going to ask for the ultimate conclusion, Mr. Examiner, and not go into the detail on which he reached this conclusion, unless it is desired to go into it.

By Mr. MARION SMITH:

Q. Have you been able to determine to your satisfaction, the cost to the company of the maintaining of the space for the time devoted to employee meetings?—A. On a full proportionate cost basis?

Q. Yes—A. I have determined that the cost to the company is 27.06 cents per meeting.

Q. Per meeting?—A. Yes.

Q. That is space that is otherwise idle at the time in question?—

A. Yes. I might add something to that. Now, by the full proportionate cost, I mean the full pro rata cost, part of the cost of the company of the time that would be assigned by the company to that meeting, and not out-of-pocket cost, which would be considerably less than that.

Q. The out-of-pocket cost would be less?—A. Yes.

Q. But this over-all cost is how you calculated it?—A. Yes.

Mr. MARION SMITH. I am not going into the detail of that analysis unless somebody wants it.

Mr. BRANCH. I don't know whether it is in the record or not as to just what the Association pays.

Mr. MARION SMITH. Yes; that is in the contract.

Cross examination by Mr. Woods:

Q. Mr. Cate, it actually costs the company nothing to let people use the premises of the company which are not in use by the company at the time, doesn't it?—A. I wouldn't say nothing.

Q. Nothing out-of-pocket?—A. I wouldn't say that. I can see where, perhaps, space which otherwise might not be in use at night, would require the use of some current for lights that, possibly otherwise, would not be incurred if that meeting would not be held. I would say it would be very small, that the out-of-pocket cost would be a very small item.

Q. What do you mean by full proportionate cost basis?—A. How long do you want me to take to answer that, sir?

Mr. MARION SMITH. Go ahead and answer the question, Mr. Cate?—A. I have made a study to determine the total costs to the Company of providing floor space owned and leased by the Company for all uses and have determined the proportionate part of

such total cost assignable to the uses of such proportions of such space for employees for Association meetings.

Based on figures taken from the books of the company for the year 1940, I determined the principal elements of carrying charges on land and buildings owned by the company, namely, maintenance, depreciation, taxes, and interest, using for interest 8 percent of the average investment in such land and buildings. To this cost or carrying charge figure for owned real estate I added charges as reflected by the books of the company for rentals of floor space from others and charges as reflected by the books of the company for house service on floor space owned and rented by the company. To the sum of these carrying charges, rental charges, and house service expenses, I added a substantial and adequate factor to fully care for all other costs which were not studied in minute detail. The resulting total cost to the company of providing floor space owned and rented by the company for the year 1940 was \$5,977,991. I then determined the average square feet of floor space owned and leased by the Company for the year 1940 amounting to 3,812,004. From these two figures I determined the cost per hour per square foot of providing floor space owned and leased by the Company of .0479 cents.

By a special study for the year 1940 of the occasions where company floor space was used by its employees for Association meetings, I was able to establish the approximate number of square feet used per meeting—at this point, I would like to add that if a portion was used, I was not able to tell it, and I had to include the entire room as though they needed it. I do know more space was not used, because if they needed more, they could not have gotten in the room—such being 868 square feet. This study was based on a weighted average of 85% of such usage for the year 1940, the remaining 15% being not subject to specific identification from readily available records.

Thus by using the costs per hour per square foot for providing floor space owned and leased by the Company, the average square feet used per Association meeting, and the average hours per Association meeting, I determined the full proportion of cost to the Company of providing floor space that is assignable to usage of such floor space for employees for Association meetings, such being 27.06 cents per meeting.

Q. Now, you stated, in that statement that you read, that the studies were made to cover the years 1939 and 1940?—A. No, sir; I said 1940.

Q. Only 1940?—A. Yes, sir.

Q. No study was made at the time the original rental agreement with the Association was consummated?—A. That is a question?

Q. Yes. The question is, did you make any such study at the time of the original rental agreement?—A. No, sir; I did not. There was some figures developed.

Q. By whom?—A. In the accounting department, to my knowledge.

Q. By whom; by yourself?—A. No, I did not make those. I know they were made. I have seen them, but they were not complete, for the reason that, I presume, for the reason that
717 they could not be complete, because we would not know what floor space they were going to use, or how long they were going to use it. However, there was some figures developed which, I presume, were made for the guidance of management in bargaining with the employees to determine how much they should charge for that space.

Q. How did you find out the exact hours of the Association meetings, and how is that now ascertainable?—A. The contract, I expect I had better read from that, or from my notes—

Trial Examiner HEKTOEN. Perhaps you can epitomize it and get it more quickly.

• The WITNESS. I beg your pardon?

Trial Examiner HEKTOEN. Can't you tell us in just a few words how the time is determined, without reading that?

The WITNESS. I believe I said I was able to determine the time based on .98 per cent of the meetings for the year 1940. The accounting department receives reports, and that is the basis of billing the Association, and those are supposed to show the amount of time that is used for each meeting, that each meeting requires, or that they use the floor space, and in 2 per cent of the cases it did not so show it, and I could not use it.

Q. That is the answer I want. You made no such accounting study of the comparative rentals of meeting places in the towns in which these Local Meetings were held, if company
718 property were not available for use?—A. I have not, sir, no sir.

Q. Do you know of any such study having been made?—In other words, the meaning of my question is do you know whether, during the time bargaining on the question of how much rental should be charged the Association for Local meetings, any comparison was made with what rentals would have been paid by the Association if they were trying to find a meeting place outside of company property?—A. No, I don't know.

Mr. Woods. That is all.

Trial Examiner HEKTOEN. That is all.

736

Stipulation

Mr. Woods. It is stipulated between counsel that from some time on or prior to August 29, 1935, down to about February 1938, when the Association acquired its mimeographing machine, the Association has in its possession cancelled checks showing payments by it each month during that period, to operators running the mimeographing machine on Association business for time spent in that occupation?

Trial Examiner HEKTOEN. Is it so stipulated?

Mr. BRANCH. Yes, sir.

741

Board Exhibit 2

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

XV-C-617

In the Matter of SOUTHERN BELL TELEPHONE & TELEGRAPH CO.
and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AF-
FILIATED WITH THE A. F. of L.

STIPULATION

It is hereby stipulated by and between Warren Woods, Attorney for the 15th Region of the National Labor Relations Board, and Marion Smith, Attorney of record in this proceeding for Southern Bell Telephone and Telegraph Company, that for the purposes of this proceeding the following facts may be taken as true and correct:

1

Southern Bell Telephone and Telegraph Company was incorporated under the laws of the state of New York on December 20, 1879, and has its principal or general office in the city of Atlanta, Georgia. Since the grant of its charter it has conducted a general telephone business in the southeastern states of the United States. At the present time it is engaged in that business in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. In these nine states there are 837 other telephone companies independently owned and operated, with the lines of which Southern Bell Telephone and Telegraph Company connects its telephone facilities for the purpose of interchanging long distance, or toll, business. In addition, the lines of the Southern Bell Telephone and Tele-

graph Company connect with the lines of the American Telephone and Telegraph Company, and thus there is provided a complete network of telephonic and auxiliary communication facilities in the territory in which Southern Bell Telephone and Telegraph Company conducts its business.

Southern Bell Telephone and Telegraph Company is one of 24 associated companies of the American Telephone and Telegraph Company commonly known as the Bell System. All of the outstanding and issued stock of Southern Bell Telephone and Telegraph Company is owned by the American Telephone and Telegraph Company.

Southern Bell Telephone and Telegraph Company is engaged in both local exchange and toll (or long distance) telephonic and auxiliary communications, both interstate and intrastate. American Telephone and Telegraph Company is engaged in only toll or long distance telephonic and auxiliary communications, interstate.

2

In addition to the connection of the lines of the Southern Bell Telephone and Telegraph Company with the lines of the American Telephone and Telegraph Company, the lines of the other associated companies of the Bell System are connected with the lines of the American Telephone and Telegraph Company, and the lines of all of the associated companies are connected with the lines of the telephone companies independently owned and operated in their respective territories throughout the United States. Thus,

742 Southern Bell Telephone and Telegraph Company forms a part of the national network of wire communication as well as a part of the international network of wire communication made by connections by wire, cable, and radio with telephone systems in foreign countries and throughout the world.

-3

As of March 1, 1941, Southern Bell Telephone and Telegraph Company had approximately \$315,000,000 invested in its telephone plant and served approximately 1,375,000 subscribers to its service directly connected with its system, with an employed personnel numbering approximately 23,000, including both regular and temporary employees.

In addition to its normal residence and business subscribers, Southern Bell Telephone and Telegraph Company is responsible for and renders all telephone service to and from, and in many instances within, all the Army, Navy, Marine Corps, Air Corps, and other installations of the armed forces of the United States

located and to be located in areas directly served by the Southern Bell Company; in addition to which it is responsible for toll or long distance service to those Army, Navy, or Marine installations located within the areas normally served by other telephone companies with the facilities of which the facilities of the Southern Bell Company are connected.

At the present time Southern Bell Telephone and Telegraph Company serves directly or indirectly in this manner approximately 100 such installations, in which on March 1, 1941, there was a personnel of approximately 550,000 soldiers, sailors, and marines; and the Southern Bell Company is preparing itself to serve others which have been and are yet to be projected.

4

In addition thereto, the Southern Bell Company is responsible for and serves directly powder factories, munitions factories, and other industries directly connected with the National Defense program, as well as the several district headquarters of the Federal Bureau of Investigation and other governmental agencies, federal and state.

5

In the territory served by the Southern Bell Telephone and Telegraph Company there are approximately 140 separate radio broadcasting stations, 94 of which are on national broadcasting chains and 46 of which are independent. Chain programs and programs from distant points (all radio broadcasting being broadcast through such chains) are carried over telephone wires to the long distance test rooms of the Southern Bell Company, usually located in downtown centres in which the broadcasting stations are located. From these test rooms local loops of this Company carry the programs to the studios and transmitters of the broadcasting stations, where the broadcast is put on the air. Local programs are carried over similar loops.

In addition to the regular chain broadcasts, in the year 1939 there were handled in this Company's territory 3,485 individual occasional programs, and during 1940 there were 6,948.

6

Another communication service for which this Company is responsible is furnishing ship-to-shore telephone and radio communication to and from ships at sea equipped with radio telephone equipment.

During the year 1940 Southern Bell Telephone and Telegraph Company purchased telephone equipment and materials valued at many millions of dollars, the greater majority of which was purchased in and shipped from points outside the territory in which the Southern Bell Company operates. During the same year the Southern Bell's gross revenues amounted to in excess of \$75,000,000, of which amount several millions of dollars represented revenues from interstate service.

8

Southern Bell Telephone and Telegraph Company admits it is engaged in interstate commerce within the meaning of the National Labor Relations Act and has been since the passage and approval of that Act, and at the present time is subject to the jurisdiction of the National Labor Relations Board.

Signed this the 17th day of March 1941.

MARION SMITH,

Marion Smith,

*Attorney of Record for Southern
Bell Telephone and Telegraph Company.*

WARREN WOODS,

Warren Woods,

*Regional Attorney,
National Labor Relations Board, 15th Region.*

744 Excerpts of Board Exhibit which read as follows:

Board Exhibit No. 4

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

Triangular Emblem.

CONSTITUTION AND JOINT AGREEMENT BETWEEN MANAGEMENT
AND EMPLOYEES' ASSOCIATION AS TO PROCEDURE

Amended by the General Assembly February 1934 and Effective
May 23, 1934—Constitution of Southern Association of Bell
Telephone Employees.

PREAMBLE

The employees of the Southern Bell Telephone and Telegraph Company, Incorporated, realizing that their interests and those

of the Company are mutual, and recognizing the obligation of a public utility to furnish to the public an adequate and efficient service at all times, formed in 1919, the Southern Association of Bell Telephone Employees to provide facilities for adjusting by conference and cooperation all questions affecting the employees and the management.

With a better understanding of the needs of their Association and a better appreciation of its relationship to the Company, the members of the Southern Association of Bell Telephone Employees hereby adopt this Constitution, superseding the Constitution adopted in December 1923, and subsequent amendments.

745

Board Exhibit 5

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

ATLANTA, GEORGIA, July 12, 1935. H.M.A.

To the Officers and Members of the Association:

In response to my letter of May 24, 1935, and appeals by the Division Chairmen to the various locals, a contribution of \$4,856 has been made by 9,712 of our members to a fund for financing our Association. This is 81% of our membership as reported at the time of last year's elections and indicates to my mind that a large majority of our members are in favor of retaining our Association, subject to such changes as may be desirable in the interest of economy or required by the provisions of the Wagner Bill.

I know of very few groups of our members who have declined to cooperate in this plan and I sincerely hope that most of the members who have not made their contribution will do so within the next few days and that the response of our members will be practically unanimous.

Unfortunately, discussions of this bill have created in the minds of a few of our people the feeling that the enactment of this law will dissolve our organization and bring about a chaotic conditions in our Association unless we reorganize it immediately. The fact that this Bill has become a law does not affect the status of our Association, so far as I am able to learn, except that its expense must be borne by the members instead of by the Company, and temporary provision has been made for this. We still have the machinery for handling our problems in local Joint Conferences and Mr. J. E. Warren, Vice President, has assured me that if any matters are referred to the higher officers of the Association he will ask that the proper Management Representative get in touch with such officer in order to handle these matters to a conclusion.

It appears to me, therefore, that not only is there no need for any hasty or ill-considered action in reorganizing our Association,

but on the contrary there are many reasons why we should consider this question from all angles before taking such a step. So until the National Labor Board, as provided for in the Wagner Bill, is appointed and gives an interpretation of some of the provisions of the law applying to such organizations as ours, I think we should retain our present Association.

As an indication that this bill does not necessarily change the status of our Association I quote from the statement made by President Roosevelt when he signed this bill last Friday:

746 "It does not cover all industry and labor, but is applicable only when violation of the legal right of independent self-organization would burden or obstruct interstate commerce. Accepted by management, labor and the public with a sense of sober responsibility and of willing cooperation, however, it should serve as an important step toward the achievement of just and peaceful labor relations in industry."

I am sure that every member desires a continuance of the harmonious and friendly relationship which has long existed between our Association and the Management and I am assured by Mr. Warren that the Management wishes to cooperate with the Association in every way possible. I am taking steps to secure information as to the effect of this law on our Association in relation to its members and the Management, and I hope to advise you further along this line in the near future.

In the meantime I would urge that the officers and members earnestly consider and discuss among themselves the kind of Association we should have and the method by which any necessary changes should be made. In considering these questions it must be borne in mind that until the Labor Board rules otherwise any action taken must be on the basis of the Association paying all the expenses of its representatives, both traveling and salaries. As suggestions for your consideration and comment I submit the following:

1. The present organization of the Association could be retained and its expense borne by members. By transacting business of the Association in off-duty hours and dealing with Management in local Joint Conferences, this expense would be reduced to a minimum, requiring a small amount of dues. Also in a few months this law may be declared unconstitutional by the courts. According to press reports, this will probably happen as several industries have announced they will seek a court test as soon as the Board makes a decision affecting them.

2. The present plan of the Association could be revised, retaining its essential principles, but reducing membership of various committees and making other changes in the interest of efficiency

and economy. If it is desired to keep our joint organization and the members have to bear all the expense, some changes of this character are both desirable and necessary.

3. Separate organizations for each department could be set up. On account of the unequal membership in the various departments this question is receiving a good deal of thought by the members of some of these departments. In the event this plan is decided upon, consideration might be given to preserving contact between the departments by means of a General Committee composed of the general officers on the basis of proportionate membership. This committee could consider matters of general interest to the membership of the Association.

747 I think careful consideration should be given to this question and each local should decide by a vote of its members what kind of an Association we should have. I, therefore, urge you to and advise your Division Chairmen as to your preference.

In the event a reorganization is decided upon another question which our members must decide is the method by which this shall be accomplished. Two plans suggest themselves:

1. By means of our present organization; by having the locals express to the District Chairmen their recommendations on essential principles; then the Division Executive Committees or Division Assembly can consider these recommendations and put them in form representing the general views and wishes of the departments and Division and submit same to the General Assembly or General Executive Committees. The latter would then consider the data submitted by the various divisions and draw up for submission to the locals a plan meeting as nearly as practicable the view of the majority.

And objection to this plan is the very considerable expense that will be involved and the fact that in bodies as large as the Division and General Assemblies it might be difficult to reach a common agreement.

2. By means of a small committee, say one or two from each department or division, selected for their knowledge, experience, ability and interest in Association matters. This committee could take the data from the various divisions and submit to the locals for consideration and amendment a plan representing the views of the majority. The difficulty with this method is how to secure such a committee from our membership scattered over nine states and comprising so many departments.

Undoubtedly we are facing the necessity of making some changes in our organization and I want to urge each of you to give your most earnest consideration to the future of our Association. In trying to find the answers to the many questions which are bound

to arise let us not be influenced by any personal wishes or ambition, but let us try to solve these problems in the interest of and for the advantage of our fellow workers.

Within the next week or ten days I hope to write you further concerning the Wagner Bill and its relation to our organization.

Sincerely yours,

HOWARD M. ASKEW, *President*.

748

Board Exhibit 6

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

ATLANTA, GEORGIA, August 1, 1935. HMA:W.

*To the Members of the General Assembly of
Southern Association of Bell Telephone Employees.*

DEAR MEMBER: Further in connection with my letter of July 12, 1935, I hand you herewith a memorandum of interpretations of the Wagner Bill as it affects the relationship of the Company to our Association.

So far as I am able to learn there appears to be nothing in our plan of organization which is in conflict with the provisions of this bill and its only immediate effect is to require that expense of the Association be borne by its members rather than the Company.

It is possible that some of these interpretations may be changed by rulings of the National Labor Board when it is organized and the Board may make other rulings affecting organizations like ours, so until we are sure of our ground my recommendation is that we do not be too hasty in reorganizing our Association.

However, I feel that it is essential that provision be made as soon as practicable for the following matters:

1. Disbursement of funds in making necessary changes in our organization. The Acting Treasurer has on hand something over \$5,000 contributed by members for the necessary expenses of the Association in response to my letter of May 24th which stated that this money would be disbursed under suitable methods approved by the members of the General Assembly.

2. Provision for payment of dues by members to meet the current expenses of the Association.

Associated with this are such questions as amount per member, whether on flat rate or other basis, how prorated between local, division and general bodies, and the custody and administration of these funds.

3. Modification of Joint Agreement between Management and the Association. The passage of the Wagner Bill makes necessary a modification of this Agreement in several respects.

These are matters which in my judgment should be considered and acted upon by the General Assembly. Experience has proven, however, that it is not practicable for a body as large as our General Assembly to promptly work out and put into proper form such questions as these except by means of smaller committees. In addition, it should be borne in mind that the cost of a General Assembly, which includes both salaries and traveling expenses of its members, will average about \$450.00 per day, and will have to be borne by the Association.

In order, therefore, that we may effect in the most economical, efficient manner the necessary changes in our Association, I ask the members of the General Assembly to give their approval of the following procedure in making the necessary constitutional amendments:

That the four General Chairmen, together with the President and General Secretary, be a committee to consider and put into proper form for consideration by the General Assembly such necessary changes in our organization as outlined herein:

That each member of the General Assembly promptly submit to his or her General Chairman (or to the President to be
749 given to this committee) such recommendations or suggestions as he or she feel should be acted upon by the committee;

That the President call this committee together promptly to consider these matters and complete their report as soon as possible;

That as soon as the committee's report is completed, a copy be sent to each member of the General Assembly, and that the General Assembly then meet for the purpose of amending or approving the report of the committee in order that these amendments as finally approved may be sent to the locals for ratification.

While it may seem to some of our members that I have been somewhat deliberate in acting in this matter, I wish to assure you that it has been receiving my earnest consideration, and I have discussed these questions with a number of our leaders. From all the information I can secure I am convinced that the plan herein submitted offers about the best method of solving the immediate problems of our Association, and I earnestly hope it will meet with the approval of a majority of the members of the Assembly.

Please let me hear from you promptly.

Sincerely yours,

HOWARD M. ASKEW, *President.*

ATLANTA, GEORGIA, August 29, 1935.

To the Members of the General Assembly:

On May 20, 1935 I wrote a letter to the officers and members of the Association advising them of the impending passage of the Wagner Bill; pointing out its effect upon our organization; and urging our members to be giving thought to just what action we should take in the event of its passage. As The Wagner Bill prohibits the Company from contributing any financial aid to our organization, I realized that unless we provided funds for the necessary expenses of the Association it would be virtually out of existence upon the enactment of this law. I, therefore, decided to ask each member to make a contribution of a small sum to this fund. So, in order to facilitate the collection of this money I submitted my plan to the Management and secured the assurance of their cooperation by furnishing the necessary transportation and other expenses in making this canvass. The Management also arranged to relieve from their duties the various officers in order to put over this campaign.

I then called a conference of the four General Chairmen, the Vice President, General Secretary, and Chairman of the Judiciary Committee and submitted my proposal to them, which received their unanimous approval. It was agreed that the sum of fifty cents from each member would raise sufficient funds for the present needs.

I then wrote the Locals under date of May 20, 1935, outlining the plan and explaining the need of raising this fund, and assuring them that this money would be disbursed under suitable methods approved by the General Assembly. This letter was followed up by a thorough canvass of all the Locals by the Division Chairmen and other officers of the Association, and as a result the sum of \$5,195.50 was contributed by 10,391 members. As the Association did not have a Treasurer and as it was advisable that we have these funds in the hands of a bonded custodian. Therefore, I appointed Mrs. Jane H. Wilkes, Acting Treasurer, and secured bond for her in the sum of \$5,000 in the American Surety Company.

I respectfully request the General Assembly to approve my action in making this appointment.

I also authorized the Acting Treasurer to pay out \$32.84 for necessary postage and stationery, and \$12.50 for her bond, and your approval of my authorization of these expenditures is requested. I also authorized the Acting Treasurer to make advances to the out of town members for the expenses of attending this Assembly, on the basis of round-trip railroad fare and

751 Pullman, plus \$5.00 per day for hotel and other expenses. The advances made for this purpose amount to \$1,465 and I request your approval of my action in this matter. I would also recommend that the Local members of the Assembly be allowed \$2.50 per day for their expenses.

In response to my letters of July 12th, August 1st and August 14th a number of suggestions were sent in from the various Divisions and Locals. These recommendations were turned over to the special committee selected by you, which has been in session here since Monday, and will doubtless be submitted to you with their recommendations.

In closing I want to pay tribute to the loyalty, efficiency and interest of our General Secretary, Mrs. Jane H. Wilkes, who has given most unselfishly of her time and thought to our Association during the past month. While she does her work cheerfully and more efficiently than any one I could suggest, I feel that the combined work of the General Secretary and Treasurer is too much to ask of one person and I would recommend that she be relieved of the work of Treasurer, which in future will be considerably increased.

Sincerely,

(Signed) HOWARD M. ASKEW, *President.*

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Board Exhibit 8

MINUTES OF THE SPECIAL SESSION OF THE GENERAL
ASSEMBLY, FRIDAY, AUGUST 30, 1935

Mr. H. M. Askew, President of the Southern Association of Bell Telephone Employees, called the General Assembly to order on Friday Morning, August 30, 1935, at 10:00 A. M.; this body, composed of the various Division Chairmen, the President, Vice President and General Secretary, having convened in special session to formulate plans for financing and continuing this organization in accordance with the provisions of the Wagner Labor Relations Bill.

Roll call showed all members present with the exception of Mr. W. W. Adams, Division Plant Chairman from Florida. Mr. Adams entered the meeting on Saturday Morning, stating that he had been detained due to an accident with his car en route to Atlanta.

The President then asked that the General Secretary read as the first order of business the following communication:

(See Mr. Askew's Letter attached)

The President asked that Mr. L. H. Weil, Vice President of the Association, take charge of the meeting and that he be allowed

to retire from the Assembly. Mr. Weil assumed the Chair and asked the pleasure of the Assembly regarding the above communication containing Mr. Askew's resignation. Mr. Slawson moved that Mr. Askew's resignation be accepted; seconded by Mr. Carter; motion unanimously carried.

Mr. Weil, continuing, explained to the Assembly his willingness to serve as the President of the Association if it were their desire to have him do so. He stated, however, that as they had just witnessed it was useless to undertake such a responsibility without the approval and cooperation of this Body and that he would not continue in the office simply by default but rather he desired to know the wishes of the majority of those present. He asked that he be allowed to retire from the room in order that the Assembly might feel free to discuss the matter among themselves and come to a mutual agreement. He asked that Mr. Ryder preside in his absence. After a brief discussion, Mr. Boardman made the motion that a vote as to the wishes of the Assembly be taken and that such vote be by roll call. Mr. Crossan seconded. Mr. Slawson asked that the motion be amended to the effect that the vote be taken by secret ballot, each representative indicating their approval or disapproval by writing either "yes" or "no." Mr. Boardman accepted the amendment to the motion and the final results of the ballot taken voiced the unanimous support that that body to its new President. Mr. Weil was called back to the Assembly and notified of the results received. He resumed the Chair as President and thanked the Assembly, again expressing his desire to serve to the very best of his ability. He emphasized the importance of the meeting, the purpose of which was to set up the financial structure of the plan of organization. He stated

that the small committee convened prior to the General Assembly had attempted to draft recommendations as to amendments which would best serve the organization as a whole. That those present at this General Assembly should bear constantly in mind the wishes of the People they represented and attempt to arrive at an agreement satisfactory to all.

The Chair then asked the pleasure of the Assembly as to House Rules to be adopted. The following were adopted to govern this Assembly in special session:

1. Daily sessions shall be from 8:30 A. M. to 12:30 P. M. and from 1:30 P. M. to 5:30 P. M.

2. Each person shall be confined to the question under consideration and shall not speak more than twice on any one subject; nor shall a member speak a second time until all members choosing to speak shall have spoken. The second speech shall be limited to ten minutes.

3. That the plan proposed by the special committee be acted upon as the order of business instead of the present Constitution; that changes to this proposed plan be authorized if approved by the vote of a majority of the members of the General Assembly; that the plan, however, in its entirety be authorized as an Amendment to the present Constitution if approved by a vote of two-thirds of the members of the General Assembly.

4. These rules may be amended or suspended at any time by a vote of two-thirds of the Assembly.

5. On all matters of parliamentary practice not specified in these Rules, Robert's Rules of Order, Revised, shall govern.

The Chair next called the attention of the Assembly to the fact that because the employees must in the future bear the expense of the association it had been necessary to redraft the Agreement between Management and the employees. He asked the wishes of the Assembly as to making this the first order of business.

Mr. Slawson asked the privilege of presenting a Resolution to the Assembly before going into the discussion on the Joint Agreement. This privilege was granted and the following resolution was presented by him with the motion that it be adopted.

"Whereas, a man has been selected to fill the place of Mr. Ben S. Read, whom we feel can most capably uphold the high standard which he maintained as President of the Southern Bell Telephone and Telegraph Company. Mr. Read was a man whose whole life had been devoted to the service of his Company, whose brilliant personality and sympathetic understanding had made him an executive beloved and admired by all his employees; however his successor, Mr. J. E. Warren, has already proven himself a true friend of the employees and a leader of unusual ability, and we, the General Assembly of the Southern Association of Bell Telephone Employees, representing approximately twelve thousand employees, to whom he has always accorded liberal and thoughtful courtesies, extend to him our congratulations and appreciation.

"Therefore, to our new President, Mr. J. E. Warren, through faith in his future efforts, and thanks for his past achievements, we, the Southern Association of Bell Telephone Employees, do make the following resolution:

"In appreciation of his justice, which enabled him to decide clearly and fairly all questions presented by the Association;

"In appreciation of his loyalty, which urged him to place the Company's welfare and the welfare of its employees above all else;

"In appreciation of his sympathetic understanding of the problems confronting all employees from the lowest to the highest;

"We do express our gratitude and do resolve to join with him in making our Company an institution of greater service to mankind."

Motion seconded and adopted unanimously by a rising vote of the Assembly. Copy of this Resolution was later forwarded to Mr. Warren.

Motion was made and seconded that the Assembly take up the discussion of the Joint Agreement; Mr. Boardman made the suggestion that it be read and discussed paragraph by paragraph. Mr. Boardman was asked by the Chair to come forward and read the Agreement as suggested in order to relieve the General Secretary of this work. Mr. Boardman acquiesced and the Assembly proceeded with its deliberations.

In discussion participated in by Messrs. Allen, Baugnon, Barnett, Carter, Lytle, Little, Ryder, Sanders, and Slawson it was brought out that, since employees would in the future be responsible for any expense incident to Joint Conferences they should be allowed to request when such meetings were to be held. The second paragraph of this Agreement was amended to care for this, pending Managements agreement. The idea of incorporating in the Agreement just when Management would and would not pay the salaries and wages was discussed but finally deemed advisable to omit.

After a thorough discussion of the Joint Agreement Mr. Ryder moved that the Association ask Mr. Warren to enter the meeting to discuss the changes. Mr. Slawson seconded, and Mr. Warren was invited to enter the meeting immediately upon reconvening after lunch.

755 The meeting reconvened at 1:00 P. M., and Mr. Dumas,

Assistant to the President, entered the meeting. He stated that Mr. Warren, due to a previous engagement with persons outside the Company, was unable to attend. He had asked Mr. Dumas to express his sincere regrets because he had looked forward to renewing acquaintances but he had felt that telephone folks would understand. Mr. Dumas said that both he and Mr. Warren felt very keenly the importance of this meeting, that it was history in the making for the employees and the Company. That it seemed almost like the signing of the Declaration of Independence. Mr. Dumas stated that the Telephone Company was unusual in a lot of respects from other businesses and particularly so with regard to its personnel; that it was hard to tell where Management stopped and employees started; that we all depended on each other, even to our financial welfare. That we were working now to pay the pension or some fellow who had retired. If this fellow now retired

had not done his part we here today would not be able to work and make our living in the Company. That we in turn were working for the people who would come after us. That we would go on pension some day ourselves and we would then look to those younger people to make our living for us.

Mr. Dumas stated in response to the question regarding Joint Conference Meetings that it had been understood in scheduling these meetings regularly that Management, if they called the meeting, could bear the expense of same. He agreed that since such meetings were the affair of the Association that they should be held according to the wishes of the employees. That Management of course would not be permitted to pay the traveling expense of such meetings but that they could under the provisions of the Wagner Bill pay salaries and wages. He stated that the Management, for the good of all concerned, would insist on meeting the provisions of the law to the letter. He continued that possibly Joint Conferences had not been used as they should; that they had been used for the discussion of sales, safety practices, etc., when as a matter of fact they were never designed for such purposes. He felt in scheduling Local Joint Conferences that it might eliminate embarrassment to some officer who had something they wished to bring up but hesitated to do so for fear that it might seem too trivial to call a special meeting in order to handle. After considerable discussion with Mr. Dumas, carried on by Messrs. Baugnon, Allen, Slawson, and Weil, Mr. Dumas agreed that there would be no scheduled Local Joint Conference Meetings, particularly where expense was involved, and that where Management wished to use the facilities of the Association to broadcast information these meetings would be considered strictly as special meetings called by Management, the expense of which could be lawfully borne by them.

Mr. Dumas agreed with the changes made in the Agreement between Employees and Management, the approved copy of which is attached hereto as Appendix II, and mimeographed copies sent to all Locals in the Association.

Mr. Dumas, at the request of the Assembly, discussed very thoroughly the pension plan of the Company. He stated that the officials of the Company were unable to tell at the present time just how the Social Security Bill would affect this plan and that they would be unable to give out any definite information until the Act was in its final form.

With a few other remarks, thanking the Assembly for having let him come in Mr. Warren's stead and assuring them of his desire to serve in any way possible, Mr. Dumas left the meeting.

Mr. Little made the motion that the Agreement as changed

be adopted. Mr. Slawson seconded and the motion unanimously carried.

The next order of business taken up was that of reading a communication from Mr. H. M. Askew, retiring President.

(See Mr. Askew's letter—No. 2).

Mr. Crossan made the motion that the recommendations regarding the authorization of expenditures already made be accepted. Mr. Slawson seconded and motion carried unanimously. Motion was also made and adopted that delegates residing within the city be allowed \$2.00 per day expense money.

The question of vacancy in office of Vice President was next brought before the Assembly. Mr. Dennis made the motion that this be made as the last order of business. Motion seconded by Mr. Carter and carried unanimously.

The Chair then reviewed with the Assembly the selection of a small Committee who had met previously to the convening of the Assembly. He outlined the program they had followed in considering all suggested plans and amendments and stated that in making its recommendations the Committee had endeavored faithfully to formulate a plan acceptable to all. The Chair stated that as Plant Representative he had been chosen on the Committee and had been selected to act as Chairman. He asked however, since he had been assumed the office of President, that he be allowed to request Mr. Boardman to serve now in the capacity of Chairman of that Committee and present the plan to the Assembly. Mr. Boardman came forward. He stated that he would like to say that he felt that the Committee had done a splendid job and wished especially to compliment them on their wonderful attitude and cooperation.

It was suggested by Mr. Slawson that the whole plan be read aloud, each member of the Assembly following with his copy, and that it be taken up for discussion, article for article, before final debate and action. The remainder of the afternoon was spent in this manner until the Assembly adjourned at 5:00 P. M.

On Saturday morning before continuing with discussion of the revised plan, Mr. Boardman made the motion that he be allowed to read the following Resolution:

757 "We, the members of the Special Committee, selected for the purpose of revising the Constitution to conform in principle with the Provisions of the Labor Bill, wish to thank the Management for their cooperation and assistance in furnishing us the necessary data which greatly facilitated the work of this Committee."

Mr. Slawson made the motion that the Resolution be adopted; Mr. Little seconded and motion carried unanimously. The discussion proceeded.

After a thorough discussion of the proposed plan and an explanation from members of the Committee as to the motives which prompted the various changes the Assembly began the consideration and final action on the Constitution.

Mr. Carter made the motion that vote on each Amendment be by roll call. Miss Dellinger seconded. After a brief discussion by Mrs. Schliesman, Messrs. Ryder and Lytle, it was brought out that such a method would be a waste of time and that roll call vote could be requested at any time, the motion lost, receiving only 9 votes.

Mr. Lytle made motion that we reconsider the motion on the order of business and that only a majority vote be required to make changes therein. Motion seconded by Mrs. Brehmer and carried. The Amendment in the House Rules has been included previously.

It nearing time for adjournment, Mr. Crossan made the motion that House Rules be suspended and that the Assembly after adjourning at 5 that afternoon reconvene at 7:00 P. M. and continue until 10:00 o'clock. Motion seconded by Miss Montague and carried.

Continuing on with the debate and action regarding the proposed plan until 5 that afternoon, the Assembly reconvened at 7 to continue the order of business.

This debate continued on through Sunday and on Monday morning the Assembly convened at 7 A. M. and proceeded through the day until the completion of all business.

The notes of the discussion are not incorporated in these minutes but are in the permanent files of the General Secretary and will be drawn up and submitted at the request of any of these delegates. After all changes had been made, the proposed plan as a whole was submitted to the General Assembly for final disposition. Motion was made by Mr. Boardman and seconded that a vote on the new plan be taken by a roll-call vote. Following is the vote of the various delegates on this order of business:

(See No. 3)

758 Those opposing the plan stated to the Assembly that while they were not in favor of it and they had acted in accordance with the wishes of their people, since they have lost they would be governed by the majority rule and stated that they would cooperate with the Assembly and use their influence to put it across in their Division.

The Constitution was adopted by the Assembly and is included herein as Appendix II.

The next order of business was that of Resolutions:

Resolution I, as submitted by the special committee was presented to the Assembly. Motion was made by Mr. Crossman, seconded by Miss Montague, that the Resolution be adopted.

There was discussion as to the amount of dues, etc., carried on by Mrs. Schliesman, Messrs. Slawson, Lytle, Little, Carter and Boardman. The Resolution was amended and final call for the question showed that the motion carried with a vote of 29. The Resolution in its final form is included herein as Appendix III.

Resolution No. II was next presented. Motion was made by Mr. Dennis, seconded by Mr. Crossan, that the Resolution be adopted. After a discussion as to the necessity of providing such a means of securing money, despite the feeling that such an occasion would not arise, carried by Messrs. Carter, Sanders, Lytle, Little, Slawson, Burnette and Crossan, the Resolution was adopted by a vote of 32 and is included as Appendix III to these Minutes.

Mr. Slawson next called the attention of the Chair to a matter which he had brought up previously and which had not been disposed of, namely, that of an interpretation of the eligibility of those people who had not contributed in the 50c donation. There seemed to be some question as to the status of those people in the various divisions and a doubt as to whether or not they would be considered as members of the Association and allowed to vote on various matters handled by this Assembly. It developed through discussion of Mrs. Schliesman, Miss Ackerman and Mrs. Sivles, Messrs. Slawson, Allen, Fuller, Lytle and Dennis that there had been a misunderstanding of the President's letter and instructions regarding the plan. The following Resolution was proposed and adopted by the Assembly:

"Whereas, A committee called by the President of our Association during the month of May for the purpose of providing ways and means for financing our Association in the face of pending legislation which would prohibit the Company from contributing to the financial support of our organization, and

"Whereas, this Committee made certain definite recommendations and rulings to provide such means as they decided necessary in such an emergency; and,

759 "Whereas, one of the rulings was to the effect that 50c per member would be collected for the purpose of financing our Association and that such members who did not contribute the 50 cents would not be permitted to vote on any proposals as to the necessary changes in the Constitution;

"Therefore, be it resolved, that we the members of this General Assembly do not feel that this Committee had the authority to

issue such ruling which provided for the contribution of 50¢ per member in order to be eligible to vote on the proposed revision and that since approximately 90% of our members made this contribution, that we invite all our members who have not contributed to do so and thereby assist the organization to carry on with a minimum of difficulty.

"Be it further resolved, that it is understood that in the event members still do not make contribution, they shall not be prohibited from voting, if otherwise qualified to do so as members of the Association, as provided for in our present Constitution."

The question as to delegation of authority for the disbursement of funds in the treasury was taken as the next order of business. Mr. Boardman made the motion that the disbursement of funds in the treasury be under the administration of the President until the temporary committee had been appointed and all disbursements subject to his approval. Motion seconded by Mrs. Schliesman and motion carried with 35 votes.

The election of a Vice President was taken as the next order of business and the final results were as follows:

Ryder	27
Slawson	2
Little	6

Mr. E. A. Ryder, Chairman of the General Engineering Local, was declared elected.

The Chair next charged the various Departmental Committees with the business of the election of one of their members to represent them on a temporary committee to draw up rules and regulations in the event Resolution No. 1 was adopted by a majority vote of a majority of the Locals. The Assembly dissolved itself into small departmental committees and one from the General Office and reported back as follows:

Accounting, Mr. H. R. Scrivener.

Commercial, Mr. J. L. Lytle, Jr.

Plant, Mr. T. L. Little.

Traffic, Miss Blanche Dellinger.

General Office, Mr. C. W. Dennis.

760 There being no further business to come before the Assembly, and after several remarks from various members present, the Chair, upon motion, declared the special session of the 1935 General Assembly adjourned, sine die.

(Signed) _____, General Secretary.

Approved:

_____, President.

MEMORANDUM—WAGNER BILL INTERPRETATIONS

The Company can continue to pay salaries of Association officers who are filling their regular jobs and doing Association work incidental to their regular duties.

The Company can continue to pay the salaries of Association officers while engaged in confering with Management and while they are meeting among themselves before or after these conferences to discuss their presentation or disposition of the matters involved. Salaries cannot be paid when Association officers are devoting their time solely to internal affairs of the Association.

The Company cannot pay traveling expenses. However, all Management Representatives are anxious to cooperate and will endeavor to meet Association officers at such times and places as will be most convenient and economical.

The Association may continue to use Company premises for their meetings without charge. Space for the exclusive full time use of the Association could not be provided without proper charge.

Association Local meetings cannot be held on Company time.

The Association may use Company typewriters and other office facilities when such is incidental to the regular Company use of these facilities. Out-of-pocket expenses such as stamps, stationery and supplies cannot be borne by the Company.

Association Representatives may make limited use of toll lines upon the same basis as is effective for employees generally.

The expense of preparation and distribution of the Minutes of Joint Conferences will be borne by the Company.

Issued July 20, 1935.

ARTICLES OF AGREEMENT BETWEEN THE SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, INCORPORATED, AND THE SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

In pursuance of the purpose and plan contemplated by the Constitution of the Association, it is mutually agreed by and between the Company and the Association as follows:

1. Local Executive Committees, District Boards, Division and General Executive Committees as defined by the Constitution of the Association shall meet for joint conference with the designated Management Representatives. In order that Local Joint Conferences may be held with due regularity the meetings will be sched-

uled and called at a time and place agreed upon by the Employee Committee and the Management Representative.

2. The Department District Head or corresponding department head is designated as the Management representative to meet with the Local Committees and the District Boards. In case of failure of the Local Committee and the District Head to reach a satisfactory adjustment of any matter under consideration, the Division Head will, at the request of the Local Committee, meet with them for further consideration of the subject.

3. Special joint conferences will be held at any time upon request of the employee representatives.

4. Members of joint conferences may confer with any employee or officer of the Company with whom they may desire to discuss any particular matter.

5. Each joint conference committee shall designate one of its members to act as Chairman.

6. Matters brought before any Local or board may be referred with recommendations to conference groups of wider jurisdiction as provided for in the Constitution of the Association.

7. Reports of joint conferences of Representatives and Management shall be prepared by a designated employee and shall be approved by the Chairman of the Employee Committee and the Management Representative; a copy to be furnished each Committee Representative, and to the appropriate representatives of the Association and the Management.

8. The Management shall make available to representatives such records as are necessary in pursuance of their duties.

9. The Management shall confer with Representatives of the Association reasonably in advance regarding any general changes in working conditions, hours, or compensation.

10. In connection with the plan of the Employees' Association it is recognized that if an employee prefers to do so, it is proper for him to refer to the proper Employee Representative any matters affecting his individual interests.

Nothing in the plan shall be construed as restricting the right of employees individually or collectively to deal with the Management through the regular channels of the Company's administrative organization.

The Company guarantees that any employee or employee representative serving or acting under or pursuant to the provisions of the Employees' Association Constitution and this Agreement shall not be discriminated against by the Management on account of anything done or said in connection with or toward the carrying out of the Plan. Complete freedom of speech and action is assured.

Any member, however, fearing or feeling that he or she has suffered such discrimination shall have the right of direct appeal to the General Department Head, Vice President or President of the Company.

* 11. This agreement may be amended from time to time by mutual consent of the President of the Association and Management and either party may cancel any or all provisions upon sixty days written notice from the President of the Company to the President of the Association or vice versa.

The foregoing articles of agreement are hereby approved and accepted, September 3, 1935.

J. E. WARREN, *President,*
For Southern Bell Telephone and
Telegraph Company, Inc.

L. H. WEIL, *President,*
For Southern Association of Bell
Telephone Employees.

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Board Exhibit 11

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

ATLANTA, GEORGIA, September 3, 1935.

To Members of the Southern Association of
Bell Telephone Employees:

As advised in information furnished you on August 27, 1935, a small committee, elected by the General Assembly, one from each department, was called into Atlanta on Monday, August 26, 1935, to draw up temporary plans for the operation of our Association under the Wagner Bill. The adjournment of this committee was followed immediately by the convening of a special session of the General Assembly on Friday morning to act on the proposed plan.

May I say in behalf of this committee and the General Assembly—the members of our Association should be proud. The committee came here with a definite duty to perform; they laid aside personal prejudices and set their shoulders to the wheel, side by side. It was hard—the work they did—and it took continuous pounding from early morn til late at night—but they completed the job in the allotted time, realizing that compromise had to be made in individual instances in the interest of the Association as a whole. The General Assembly, convening on Friday Morning, went promptly to work—and it was no easy task to which they had been assigned. The fine spirit which prompted them to contribute their week-end and holiday in order that the expenses of the Association might be kept at a minimum continued throughout the session of the Assembly, as manifested in the

splendid performance of their duties, and is one to be commended. I tell you this because I feel that the untiring efforts of these people should be known to you and that their example of unselfish cooperation should serve as an inspiration to us all in the following up of their endeavors.

As a result of the resignation of Mr. H. M. Askew, former President of the Association, at this past meeting, I as Vice President, automatically assumed the office of President. I had no desire to go into this office by default and so expressed myself to the Assembly. It was most encouraging to me to learn from the results of a secret vote taken in my absence from the meeting that it was the unanimous wish of the Assembly that I continue in office as President. I believe, from the conduct of this meeting and the cooperation of your representatives in assisting me in every way possible, the sincerity of those vows made. We are going through more or less uncharted seas and I am not unmindful of the responsibility which rests on me. With your cooperation we can come through—without it it is impossible. I wish to assure the entire membership of my most earnest desire to serve with you and to carry out, as nearly as possible, the wishes of our people.

Perhaps the most urgent order of business enacted during this General Assembly was the passage of a Resolution, copy of which is enclosed, providing for the assessment of dues. It is imperative that this be handled by our entire membership immediately and the results of the action taken forwarded to the General Secretary on the form provided. If possible, it would be very desirable to have the majority vote of the majority of the Locals in the hands of the General Secretary before October 1, 1935, in order that we may go "full steam ahead." The necessary forms for carrying out the provisions of this Resolution will be forwarded to you promptly.

765 It is felt that study and action by you on the whole plan of the proposed Constitution, prior to the adoption of this Resolution, would materially affect prompt action, and since dues must be assessed regardless of the plan adopted, in the interest of time this method of procedure has been deemed advisable. A copy of the revised Constitution will be in your hands as soon as it can be prepared by the General Secretary, giving in detail the changes made and the thoughts which prompted them. The committee earnestly endeavored to take into consideration the recommendations submitted by you and I sincerely believe that you will feel as this Assembly has felt—that, while the plan is not perfect, it is a base on which to work and that you will back your leaders and our Association until it is perfected.

I know that our employee body, as manifested in your recent special contribution, desires no outside influence in our ranks and

I believe that you will accept the plan your representative has to offer, making allowance for its defects. Prompt action is essential and I hope that you as individuals will see the necessity of rallying to the cause—assisting your Local representative to make a report of your action as quickly as possible and that we may go forward one hundred per cent strong.

Yours very truly,

(Sd.) LLOYD H. WEIL, *President.*

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Board Exhibit 12

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

ATLANTA, GEORGIA, September 11, 1935.

To All Local Chairmen:

Since sending to you my letter of September 3, 1935, it has been brought to my attention in a few instances that our members desire to know more about the financing of our Association. It is nothing but natural that they should and this phase would have been covered in my letter to you except for the fact that, knowing it would be given in detail in the Minutes of the Meeting, I felt that it was not necessary at this time. This, I realize now, was an error of judgment and for your information I will attempt to outline the plan proposed. This is of course a tremendous problem and one with which we have had no experience. It is one that must be tackled, however, and I assure you that your leaders are picking their way as carefully as possible in the interest of economy to all.

When it was decided to ask for dues of 10 cents a week from the men and 5 cents a week from the ladies, it was estimated that this would give the Association about \$28,000 per total average annual revenue. This figure is based on an immediate anticipated membership of 8,000 members. In arriving at the above amount of dues the actual expense to the Company for the operation of the Association during the year 1934 was used as a basis. These figures are as follows:

Local Meetings	\$4,653
District Meetings	2,612
Division Meetings	5,232
General Assembly	2,256
Expense of President's Office	506
Office help, postage, and stationery	1,000
Total	16,319

Salaries and wages of employees engaged on Association work during the year amounted to approximately \$8,900. It is recognized, however, that a large portion of this will still be borne by the Company since the time involved was in connection with Joint

Conference Meetings and under the provisions of the Wagner Bill may be properly charged to Management. The time which will be necessary to contact our members and explain to them the proposed revision of the Constitution, together with the reasons for the assessment of dues will of necessity have to be borne by the Association. It is anticipated that a large part of this time will be on the representative's own time, thereby keeping the amount of salaries and wages we will have to pay our representatives at a minimum.

It is of course anticipated that many economies will be made in the holding of our meetings in the future. It is felt that the anticipated amount of \$28,000. will be adequate to carry on the work of the Association with perhaps a small balance left over. If a balance accrues which will justify such action it is anticipated that this amount will be budgeted to the State Finance Board who will distribute it to the locals in accordance with their requirements for the operation of the Association in their respective territory, such requirements being determined by the state Finance Board.

767 The dues asked for are purely tentative and it is entirely probable that, after we gain experience in paying our own way and can determine the total membership of our organization, such amount can be reduced. In the meantime you may be sure your money will be spent as economically as possible and that instructions regarding approvals for expenditures will be most rigid in the final rules and regulations of the General Executive Board. If you had seen how the last General Assembly worked night and day, and how serious the majority were in trying to save every nickel of your money I am sure you would have felt as I did that they deserved the thanks of every one of us and that they were awake to the responsibility which is theirs.

The proposed plan calls for a General Executive Board, composed of 7 members, (2 from Plant, 2 from Traffic, 1 from Accounting, 1 from Commercial and 1 from the General Office). This Board will be the supreme power and included in its authorities will be the setting up, in conjunction with what will be known as the State Finance Committee, a budget of the expenditures for each Division. This plan, if adopted can not become effective until February under the restrictions of our present Constitution. In the meantime we must function as an organization—under our present Constitution we have the machinery. It was recommended and approved by the General Assembly, as outlined to you in the Resolution, that a small committee be appointed, one from each Department, to serve in lieu of the General Executive Board until such time as that Board could

start functioning. This committee, appointed by the representatives of each Department is as follows:

Accounting, Mr. H. R. Scrivener.

Commercial, Mr. J. L. Lytle, Jr.

Plant, Mr. T. L. Little.

Traffic, Mrs. Blanche Stallings.

General Office, Mr. Clifford Dennis.

This committee, together with the President, will be the guardian of the expenditures of the Association until such time as the proposed plan becomes effective if adopted. They will also be responsible for drawing up very strict and rigid rules for the handling of this fund, such regulations being submitted to the Division Chairman as suggestions for setting up their own financial structure within their respective territory. Folks, we are having to feel our way and you must try to persuade your people to be patient. We are going to come through but it is going to take time and the whole-hearted cooperation and interest of every one of our members.

I have also heard in some few instances where you prefer to hold up your vote on the Resolution until you see the plan proposed. May I assure you that it has been through no desire to "hold an ace in the hole" that this information is not already in your hands. Our proposed plan, similar to our present set-up, but taking in as many economies as we felt could be justified at this time and developing, through the General Executive Board, a much stronger organization, is thoroughly known by your Division Chairman. Since it is quite an undertaking to get this information compiled and the necessary copies made and forwarded to you, it was felt that it was desirable to forward the Resolution to you prior to the plan, leaving such questions as you might wish to ask to your leaders to answer. It is very necessary that we begin the collection of dues as early as possible in order to meet the expenses of the next six months—which will include the major expense of the Association for the entire 768 year. But since this question has arisen with regard to the proposed plan, and in order to assist you in handling this matter at the very earliest moment, may I say that the proposed plan itself has been completed but has been held up pending the compiling of the discussions which took place and which it was felt you would be interested in seeing with regard to the stand your representative took in the matter. The furnishing of those complete Minutes of the Meeting will be postponed, however, and a copy of the proposed plan, together with a brief outline of the thoughts which prompted the change, will be in your hands the early part of next week.

Remember—your Association is on trial. If you support it financially you can make it what you want it to be. If you let it fail now you are losing a great asset for the future. In other words, you can make YOUR future secure and rosy or by failing in this pinch you can expose it to every kind of trouble.

I sincerely hope that the above information will help you. If there are any other doubts in your mind, please contact your Division Chairman. Your leaders appreciate your suggestions and are very anxious to know of any difficulties which arise in order that they may help you straighten them out if possible.

Yours very truly,

L. H. WEIL, *President.*

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Board Exhibit 13

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

ATLANTA, GEORGIA, *October 1, 1935.*

To All Local Chairmen:

Well, you've done it. Resolution #1 has gone over with a bang. Already 230 Locals, representing 7,293 members, have approved the payment of dues and more approvals are arriving every minute. Only 4 Locals, representing 78 members, have voiced their disapproval and I am sure it was our fault for not making everything clear to them. While we want every Local to keep voting until every one has approved Resolution #1, it has now been approved by a majority of the Locals and of the membership and is ready to be put into effect.

You've certainly rallied to the cause, and you deserve all the credit in the world. Now let's set about in a friendly, cooperative way to deliberately make that cause stronger and to have, in the final analysis, an organization which you and I will be proud to look back on over the years and to know that we played a definite part in its development. It is going to be no easy job, and no one knows it better than "yours truly." It has, I know, already called on you to devote much of your own time in its behalf. It will, for some time to come, necessitate a lot of hard, earnest work on your part to carry on. But we must realize the responsibility which is ours in keeping the old ship right side up and we should appreciate the opportunity we have to safeguard the well being of ourselves and our fellow employees now and in the future by providing a means of cooperation and fair play between employees and the Company in which we have chosen to live our lives.

If we have seemed to hurry you with the "dues resolution" it is because most of our expense falls in November, January and February. We must start collecting dues as soon as possible in order that we may have the necessary monies on hand. After our finances are arranged, we can then set about working out the new Constitution. Obviously, the one proposed is a good start in the right direction and if adopted by you as a working basis can be changed to suit the wishes of the majority of our members at the next February meeting. It is yours to do with as the majority of you see fit.

The whole thing is going to take experience. And let's not forget that those people who are trying to get this thing in working order are folks just like you and me. They are doing their dead level best to work out the best possible plan for the greatest number of people and they aren't getting a nickel for it—nothing but a lot of grief and hard work. When we criticize, and I am sure we all welcome constructive criticism, let's do it in a friendly sort of way. Let's not be so prone to condemn—let's gang together and push. But say, I'm miles off the subject—somehow I just can't help lecturing.

I am enclosing herewith a supply of cards, together with "Rules and Regulations" for handling. Look them over:

Form 1—Application for Membership.

Form 2—Salary Deduction Authorization.

Form 3—Membership Record.

Now that looks like a big order. It is! And a most important one. You will see that the Forms are printed on two distinctive colored cards: (a) white cards, to be used in case of male members and (b) salmon cards, to be used for female members. This color scheme is essential in the case of the salary deduction authorizations as the color of the card will indicate to the Accounting Department the amount of dues to be deducted from the employee's salary. You should impress upon the Secretary of your Local the importance of using the proper colored card for each member.

Forms 1 and 2 should be signed by each member who desires to continue his or her membership in the Association under the conditions of Resolution #1; also by any and all eligible employees who desire to join forces with us. When requesting the present members of your Local to sign the new application for membership, Form 1, it should be explained that the purpose of this form is to provide the officers of the Association with a complete and uniform record of membership in the Association and is not to be considered as a new application for membership. It should also

be explained that the officers of the Association may at any time be called upon to substantiate their claim that they are the authorized representatives of the majority of the employees of the Company. It is therefore very important that you and your Secretary not only contact each and every member of your Local but that you also solicit those eligible employees in your group who are not now members to see if they will join with us. Try to impress on your people that it is for the good of the employee body as a whole that the big majority of our people cooperate with our Association in order that we may make a stronger front. Surely, when the picture is presented to them as it should be, there will be very few cases where individuals will not be only too glad to cooperate to the fullest extent. These cards are being sent to all Locals as I believe every one desires to support the will of the majority whether they voted for or against the dues.

In regard to the salary deduction authorizations, Form 2, there have come to my attention a few reports where members have objected to this plan. It should be explained to them that the plan is essential to the operation of the Association on an economical basis, and unless the collection of dues is centralized the monies provided for by the rate of dues established by Resolution #1 would not be sufficient to meet the financial requirement of the Association. If the responsibility for collection of dues in the Association were placed in the hands of the Secretary of each Local, the cost of postage, printing, stationery, money order fees, personal bond, etc., would require a considerable outlay of money. Also, when considering the time that would be required for the Secretary to contact each member for the purpose of collecting dues, particularly in the case of Locals where the members are not all located in the same town, and the difficulties that would be encountered incident to keeping each member paid up to date, it can be readily seen that the Association would not have a stable income. It is also impossible from the standpoint of the records in the office of the General Secretary that this plan be made optional and exceptions can therefore not be made. In this connection, if you, as Local Chairman have as members of your Local any No. 2 Operating Agents please read carefully Paragraph E of the enclosed Rules and Regulations.

As explained to you, the greater portion of our expense will occur between now and February. It is therefore very necessary that we get under way as quickly as possible in order not to find ourselves in financial difficulties. It is also important, in fairness to every one, that we all start at the "crack of the gun." We have therefore set as the starting date October 31, 1935, and until

further, notice you will please show this date on all cards. This means that deductions will begin with the pay check for the pay roll period beginning nearest November 1st, 1935. It will, of course, not be necessary to call a meeting to have these cards signed but rather see that they are turned over to your Secretary, together with the "rules and regulations" after they are thoroughly understood by you, for distribution immediately to all employees eligible for membership. It may be that your total membership does not include all eligible employees in your group who are willing to sign up with us now, in which event you may need more cards. Just drop me a note and an additional supply will be sent immediately.

Remember now—contact each and every person eligible to membership. The time is right for a strong membership drive. 771 Have your Secretary distribute these cards immediately and get them back to me, according to the "Rules and Regulations" enclosed herewith, at the earliest possible moment. November 1st is the dead line. If postage is required in handling these cards will you please pay the amount and bill me for it, giving briefly, for my records, reason therefor and the money will be refunded to you.

Please see that these "Rules and Regulations" are thoroughly familiar to you and your Secretary and that they are then filed permanently in your Chairman's Handbook for safe keeping. There will be more "Rules and Regulations" to follow. The next, perhaps, will cover "Transfers and Termination of Membership," Form 4, and will be forwarded to you, together with a supply of the forms, sometime around the first of November.

The manner in which you handle the signing of these cards and the results you obtain will be an acid test of your ability and efficiency. I'll be watching with interest (to say nothing of anxiety) the job you perform.

I know you're tired of rushing, so am I, but this thing is just so big and so important, we'll have to keep pressing until we complete it. Perhaps some day I can come to you with a proposition and say "Take your time, friend of mine," but right now we're in a jam—we've been in a whirl more or less since the latter part of May. You've been wonderful so far, let's continue this spirit now that we are near the finish. Let's keep on keeping on.

Thank you again for your marvelous cooperation. With people like our telephone folks behind a thing—to fail is impossible.

Yours sincerely,

JANE H. WILKES, *General Secretary.*

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

ATLANTA, GEORGIA, Sept. 18, 1935.

To All Local Chairmen:

The following material is enclosed herewith:

1. Letter from President Weil, dated September 16, 1935, together with outline and thoughts covering major points in proposed Constitution and Management's agreement.
2. Proposed Constitution.
3. Management's Agreement.
4. Resolution No. 2.
5. Form on which to submit action taken by your Local with regard to proposed Constitution and Resolution No. 2.

This proposed Constitution is in reality an Amendment to your present plan and in accordance with Article XVI thereof "shall become effective if ratified by a majority vote of two-thirds of the Locals within 6 months from the date of adoption by the General Assembly." It will therefore be necessary that the vote of your Local be in the hands of the General Secretary by not later than February 1, 1936. The enclosed form is for the purpose of making this report. Copy of the minutes of this special session of the General Assembly will be furnished you as soon as possible. These minutes will require no action but will be sent to you only as a matter of information and in order that your records may be complete.

In connection with the approval of Resolution sent you a few days ago covering the assessment of dues, cards for handling payroll deductions and for membership records will soon be available. A supply of these, together with instructions regarding them will be forwarded to you as soon as possible.

Now, I know the book on "What a Dignified Genl. Secty. Should Do" would say—"be very formal, matter of fact—stop right there." But, folks, I've got things on my mind and I just can't act as if you and I were strangers. So I'm just walking in and saying "Please pardon me, but where is that ballot regarding the dues?" "Oh, you've had your meeting but just failed to send it in." Well, listen, my friend, you have got me tearing my hair. If you haven't had your meeting, do so immediately. If you aren't in agreement with us on the proposition, contact your Division Chairman or your President—or I'd be thrilled at the chance to talk to you myself. But let's get together—time is getting short. You know its mine and your job and I've said

boastingly that we could do it—and I counted strong on you when I said it. I have heard from 55 Locals to date—I need 177 to have a majority—we want them all. Any consideration you can give me in helping finish this task in record time would certainly be appreciated. Let's have it over by Wednesday, September 25, one week from today.

Always, most sincerely,

JANE H. WILKES, *General Secretary.*

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Board Exhibit 14-B.

OUTLINE OF CHANGES MADE AND REASONS THEREFOR

In studying this outline it will, I believe, be helpful to you to turn to those references made herein and to study them in connection with the reasons given.

It must be borne in mind that routines of Bodies can not be incorporated as a part of the Constitution. It was felt that such routines would of necessity vary in accordance with existing conditions in various territories and should therefore be prepared by each ruling Body to fit their situation.

There were a few changes made in the Preamble and Article I: it being felt that such changes, while not affecting the operation of our plan, were desirable in that they eliminated many references to the Company.

Your Local set-up functions, under the proposed plan, the same as under the present Constitution.

Your District organization, functioning the same as before, becomes known as the District Departmental Board. It was believed that such a title would be more explanatory than the present District Executive Board and similar changes in the title of Bodies have been carried throughout.

In working out the functions of the Division set-up, to be known under the proposed plan as the State-Departmental Board, it was the thought of the majority of the members of the General Assembly that these Boards, particularly their Chairman, in the various states and departments, should be the leaders of our Association and that to them should be delegated the responsibility and authority for handling matters in their respective territory to conclusion if possible. You will find that this Assembly has attempted to do this in Article X, Section 1, paragraph d, page 12 of the enclosed plan and again in the last paragraph of that section.

Also, the Chairmen of the four State Departmental Boards are vested with more authority by comprising what is to be known as the State Finance Committee, which functions in accordance with

Article IX, Section 8, page 11 of the enclosed. In placing upon them this power it was the thought of the members of the General Assembly that this Body would budget the expenses needed to operate the Association in its Division during the year. The rules and regulations governing this action are to be drawn up by the special committee referred to in the Resolution forwarded to you a few days ago if and when the Resolution is adopted. It was the thought of this Assembly that the expenditures of each Division should be handled by the State representative subject to the approval of the General Executive Board, the functions of which Body are brought out later.

The General Departmental Board functions in accordance with the present General Executive Committee except for a few minor changes as brought out in Article X, again the Assembly feeling that if possible all matters should be settled within the department within the state and that the State Departmental Chairman should be called upon to assume that authority. It was also the consensus of opinion that a meeting of the State Departmental Chairmen with the General Departmental Heads was advisable—that such would be the object of the General Departmental Board.

774 From the General Departmental Boards are elected the members of the General Executive Board as brought out in Article III, Section 7, page 3. It was anticipated that this General Executive Board would function in accordance with Article XII, pages 14 and 15.

Such a Board was originated with the thought that great economies could be effected by providing that all members except those as brought out in Article III, Section 7, page 3, on the General Departmental Boards, having completed their business with Management, would return to their respective territories after perhaps a two day session at the General Headquarters of the Company. Also, that through this small impartial Board, composed of members from each Department, greater benefits might be derived for the Association in that they could deal, not as a department but for the entire membership of the Association, with the Officers of our Company. It was felt that such a Board, cutting down considerably the expense of the Association, vested with power to act, composed of our strongest leaders from all departments, would fill a long-felt need.

As defined in Article XIII, pages 15 and 16, the duties of the General Assembly have been considerably limited, it being felt that this Body is too unwieldy for any prompt action, also that it is too expensive. It is anticipated that this Body, whose only duties as a Body are described in Article XIII, Sections 1 and 4, pages 15 and 16, will be in session for not more than a day. It was

felt, however, by the majority of the members of this special session of the General Assembly that since all members of the General Departmental Boards would be assembled to elect a President, this gathering would give the most economical method for giving these representatives information about Association affairs, particularly budgetary and financial matters.

The duties of the President, as described in Article XIV, Section 8, page 18, of the enclosed, will be subject to the dictates of the General Executive Board and are confined to the wishes of that Body. A change has been made as to the qualifications for holding the office of President, it being the feeling that such restrictions as under the present plan are too confining; also a change has been made in the status of the Vice President, as brought out in Article X, Section 3, page 10, and Article XI, Section 3, also Article XIII, Section 9, pages 18 and 19.

With regard to Amendments, as described in Article XVI, page 20 of the enclosed, it was the thought of the Assembly that by the proposed Amendments, submitted by various State Departmental Boards, being debated by the 7 members of the General Executive Board and their recommendations being submitted by correspondence to the members of the General Departmental Boards for their action, this phase of the work could be done much more economically and satisfactorily. It might even be desirable to submit those Amendments which affect one particular department only to the representatives of the Department concerned for their approval or disapproval. Such Amendments being always subject to the final ratification of the members of the Locals.

As to negotiating a loan as provided in Article XII, Section 1, paragraph h, page 15, it was felt that this authority was necessary to put the Association on the same basis as any other business organization; however, the Assembly attempted to make the conditions so iron-bound that no group of representatives would be permitted to throw the Association into debt without just cause. The amount of such loan, always subject to the approval of your representatives, could never be so excessive that it
775 could not be handled promptly by the Association. It was thought to be good business that such a provision be made and it was felt that the clause "total amount of such loans in effect at one time shall not exceed two months' anticipated revenue, etc.," was a sufficient safeguard. There may be occasions, particularly in financing the Association from now through next February, where a loan to carry us over would be absolutely necessary. This situation was taken into consideration and brought out in Resolution No. 2 enclosed herein. It was felt that since the major portion of our expenses would occur within the next six months it might be necessary to make such a loan until we could get our

selves on a running basis. It is hoped and believed, however, that the big majority of our 14,000 eligible employees will have become members of our Association by that time and such a step will not be necessary. As a precautionary measure however this Resolution was adopted by the Assembly, in lieu of the adoption of the proposed Constitution which can not become effective until February 1st of next year.

The Finances of the Association, as outlined in Article V, page 5, must be considered more or less temporary until experience shows just how many members we may anticipate and how much the expense will be, operating under our own management. It was felt by the General Assembly that if a big majority of our members signify their willingness to continue in the Association the dues as specified can and should be considerably reduced.

While it is contemplated that few occasions, if any, will arise when it will be necessary to make special assessments, it was felt by the majority of the members of the Assembly that such provision should be made in case an unforeseen emergency developed. This provision will not be used unless it is an absolute emergency and is always subject to the approval of the Locals.

It was the thought in adding Associate Members, as defined in Article VI, section 3, page 7, that there were in many instances in our territory people, made ineligible to active membership in our Association by their position with the Company, who really needed and were willing to pay for the protection of the Association without participating in any of its functions otherwise. It was also the belief that those groups of people would profit by any general activities of the Association and it was only fair that they be allowed to pay for such benefits as might be derived.

New Amendments have been added, such as Transfer of Membership and Reinstatement, covered on page 8 of the enclosed.

In making the dates of the meetings read "during the week beginning, etc.", it was the thought that these meetings, if left to the entire week, could probably be arranged by the persons involved in each Division more economically if a little margin were allowed.

The above changes and the brief outline as to the thoughts which prompted them cover the major changes made.

The Management's Agreement has been redrafted and approved by the General Assembly. The revision of this Agreement was necessary to eliminate all reference to the Company financing the expense of the Association. A change was also made, as indicated in the first paragraph, whereby Local Joint Conferences will be called only by mutual consent of the Em-

ployees' Committee and Management. A number of other changes which are more favorable to the Association are also included.

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Board Exhibit 36

[Copy]

**GENERAL AGREEMENT BETWEEN THE SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY, INC., AND THE SOUTHERN ASSOCIATION
OF BELL TELEPHONE EMPLOYEES**

Article I. Purpose

Section 1. The Southern Bell Telephone and Telegraph Company, hereinafter referred to as the "Company" and the Southern Association of Bell Telephone Employees, hereinafter referred to as the "Association," in bargaining collectively on wages, hours of work, and other conditions of employment, and to adjust grievances, have entered into this General Agreement on this the 30th day of July, 1949.

Article II. Definition

Section 1. For the purposes of this agreement, an employee means an employee of the Southern Bell Telephone and Telegraph Company who does not have authority to hire and discharge or to promote or to transfer an employee from one occupation or territory to another, nor the authority to exercise executive or managerial functions or powers.

Article III. Recognition

Section 1. The Association having certified to the Company that it has not less than 14,500 members in good standing who are employees, the Company agrees that this number constitutes a majority of employees. The Company recognizes the Association as the designated representative of the employees and as their sole collective bargaining agency in respect to rates of pay, wages, hours of employment, or other conditions of employment, and for the purpose of entering into agreements with reference thereto.

Article IV. Meetings

Section 1. Meetings between authorized representatives of the Association and representatives of the Company will be held at any time upon reasonable notice by either party to the other.

577. Section 2. Minutes of meetings held between authorized representatives of the Association and the Management shall be approved by the Chairman of the particular Association Committee and the Chairman of the corresponding Management Committee. Management shall furnish a copy of such minutes to each representative present at the meeting.

Article V. General Working Practices

Section 1. The general working practices stated in Exhibit I attached hereto and made a part thereof shall be continued during the term of this Agreement.

Article VI. Adjustment of Grievances

Section 1. The adjustment of grievances of individual employees or groups of employees may be undertaken and consummated between the representative or representatives of the Association and a Management representative at any level of the Company organization having authority over the conditions or circumstances out of which the grievance or grievances arose.

Section 2. (a) Nothing in this agreement shall be construed as restricting the rights of employees individually or collectively to adjust grievances with the Management of the Company through the regular channels of the Company's administrative organization. The Company agrees, however, that after a grievance of an employee or employees has been placed in the hands of an Association representative by an employee or employees for negotiation with the Management and an Association representative has dealt with a Management representative in relation thereto, the Company will not enter into negotiations with such employee or employees without the consent of the Association representative or duly accredited alternate.

(b) It is agreed that there will be no discrimination or interference by the Company or any of its agents against any member because of membership or activity in the Association.

(c) Any Association member feeling that he or she has suffered such discrimination, shall have the right of direct appeal to the General Department Head, Vice President, or President of the Company.

Article VII. Collective Bargaining on Wages and Working Conditions

Section 1. Agreements covering wages and working conditions shall be pursuant to this agreement, but such agreements shall in no way conflict with or change the provisions of this General

778 Agreement. Negotiations with a view to consummating such agreements shall be conducted in the following manner:

(a) (1) For employees in the Accounting Department of the Company, other than those referred to in (2) below, between the General Auditor or his delegated representative or representatives, representing the Company and the General Accounting Board, or their authorized representative or representatives, representing the Association.

(2) For employees in the General Accounting Department of the Company at Company Headquarters between the General Auditor or his delegated representative or representatives, representing the Company and the Executive Committee of the General Accounting Local, or their authorized representative or representatives, representing the Association.

(b) For employees in the Commercial Department of the Company, other than those referred to in (f) below, between the General Commercial Manager or his delegated representative or representatives, representing the Company and the General Commercial Board, or their authorized representative or representatives, representing the Association.

(c) For employees in the Plant Department of the Company, other than those referred to in (f) below, between the General Plant Manager or his delegated representative or representatives, representing the Company and the General Plant Board, or their authorized representative or representatives, representing the Association.

(d) For employees in the Traffic Department of the Company, other than those referred to in (f) below, between the General Traffic Manager or his delegated representative or representatives, representing the Company and the General Traffic Board, or their authorized representative or representatives, representing the Association.

(e) For employees in the General Engineering Department of the Company between the Chief Engineer or his delegated representative or representatives, representing the Company and the General Engineering Committee or their authorized representative or representatives, representing the Association.

(f) For all employees at General Headquarters (other than those referred to in (a) (2) and (e) above), including General Traffic, General Plant, General Commercial and General Executive, between the Assistant to the President or his delegated representative or representatives, representing the Company and the Executive Local Committee or their authorized representative or representatives, representing the Association.

779. (g) Agreements consummated under paragraphs (a) (1), (b), (c), and (d) above shall be effective and binding on the parties hereto only when signed by the General Departmental Head and the General Departmental Board Chairman involved. Agreements consummated under paragraph (a) (2) above shall be effective and binding on the parties hereto only when signed by the General Auditor of the Company and the General Accounting Committee Chairman. Agreements consummated under paragraph (e) above shall be effective and binding on the parties hereto only when signed by the Chief Engineer of the Company and the General Engineering Committee Chairman. Agreements consummated under paragraph (f) above shall be effective and binding on the parties hereto only when signed by the Assistant to the President of the Company and the General Office Committee Chairman.

Section 2. (a) Changes in or additions to agreements provided for in Section 1 under (a) (1), (b), (c), and (d) affecting only the appropriate departmental employees in a state or a locality thereof may be negotiated between the respective State Departmental Head, or his delegated representative or representatives, representing the Company, and the respective State Departmental Board, or its delegated representative or representatives, representing the Association.

(b) Agreements consummated under (a) of this section shall be effective and binding on the parties hereto only when signed by the respective State Departmental Head and the respective State Departmental Board Chairman and countersigned by the General Departmental Head and the General Departmental Board Chairman for the department involved.

Section 3. Agreements on matters concerning or affecting all employees or matters appealed from the negotiations provided for under Sections 1 and 2 above, may be negotiated between the President and the Operating Vice President of the Company, or their delegated representative or representatives, and the General Executive Board of the Association, or its authorized representative or representatives. Agreements consummated under this Section shall be effective and binding on the parties hereto only when signed by the President of the Company and the President of the Association.

Article VIII. Payroll Deduction of Dues

Section 1. The Company agrees upon written request signed by an employee to deduct from such employee's wages the amount of Association dues specified in the request and to forward the amount thus deducted to the Association until such request is revoked by the employee or the Association.

780 Section 2. The Association agrees to pay to the Company the cost of making deductions.

Article IX. General Agreement and Other Agreements

Section 1. This General Agreement (together with other agreements entered into pursuant to it) shall constitute the entire agreement between the Company and the Association; and no amendments to this General Agreement shall be binding on the parties unless signed by the President of the Company and the President of the Association.

Article X. Term of General Agreement

Section 1. This agreement shall continue in effect for one (1) year from date of execution and thereafter for periods of one year, unless cancelled by either party by notice in writing to the other sixty (60) days prior to any annual expiration date; but this section shall not apply to other agreements entered into pursuant to and under the provisions of this General Agreement, each of which shall continue for the term fixed therein.

The foregoing articles of agreement are hereby approved and accepted. Executed this the 30th day of July 1940.

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY.

By (Sd.) J. E. WARREN, *President*.

SOUTHERN ASSOCIATION OF BELL
TELEPHONE EMPLOYEES.

By (Sd.) T. L. LITTLE, *President*.

781 EXHIBIT I TO GENERAL AGREEMENT, DATED JULY 30TH, 1940,
BETWEEN THE SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY AND THE SOUTHERN ASSOCIATION OF BELL TELE-
PHONE EMPLOYEES.

GENERAL WORKING PRACTICES

General.—This Exhibit covers the agreement relating to basic work periods and rates, and absent time due to holidays, vacations, military service, as applicable to regular full time employees, except certain unskilled and other miscellaneous forces for whom the existing practices shall be continued.

Section 1. Basic work week and rates.—(a) The basic work week comprises a work schedule of five (5) days each calendar week, which schedule constitutes normal or full-time service. Tours of less than a full day may be assigned employees on any

day, and evening or night tours may be assigned employees on any day, to meet service requirements.

(b) Basic wage rates and payroll increases will be on the basis of the normal working schedule of five days each week. Earnings for each full day, from Monday through Saturday, for employees paid weekly or bi-weekly will be computed at $\frac{1}{5}$ of the five day weekly basic rate. The daily earnings of employees paid monthly or semi-monthly will be computed by dividing the monthly basic wage rate by the number of days in the calendar month, less the number of Saturdays and Sundays in that month.

Section 2. Working hours.—The normal working hours to be observed by full time schedule employees are 8 hours per day and 40 hours per week. Where the normal tour for office, clerical and certain miscellaneous employees and part time employees is less than 40 hours per week or eight hours per day the existing practices shall be continued.

Section 3. Holidays.—(a) The following holidays will be observed: New Year's Day, January 1st; Independence Day, July 4th; Labor Day, First Monday in September; Thanksgiving Day,

Last Thursday in November; Christmas Day, December 25th; Memorial Day (Alabama, April 26th; Carolinas, May 10th; Florida, April 26th or May 30th according to local observance; Georgia, April 26th; Kentucky, May 30th; Louisiana (Except New Orleans), June 3rd; New Orleans City, Mardi Gras Day; Mississippi, April 26th; Tennessee, May 30th).

(b) Payments for time not worked on an authorized holiday will be made only for holidays falling within an employee's regular scheduled tour. Should an authorized holiday occur on a day when an employee is not regularly scheduled to work and does not work, no compensation will be allowed for the holiday. When an authorized holiday falls on Sunday the following Monday will be observed.

Section 4. Vacations.—(a) Employees are to be given vacations each calendar year under conditions stated below.

(b) Schedules for vacations are to be prepared in advance, consistent with the requirements of the job or service, and, insofar as practical, conforming to the wishes of the employees.

(c) The length of the vacation period for employees will be determined as outlined below on basis of the term of Net Credited service.

(d) An employee whose Net Credited service will be fifteen years or more prior to July 1st of the current year is to be given a vacation of three weeks during that calendar year.

(e) An employee whose Net Credited service will be two years or more, but less than fifteen years, prior to July 1st of the current

year is to be given a vacation of two weeks during that calendar year.

(f) An employee who enters the service prior to January 1st of the current year, but whose Net Credited service will not be as much as two years as of the end of June of that year is to be given a vacation of one week, provided eight months' Net Credited service is completed prior to the time the vacation is taken.

783. (g) An employee who enters the service on or subsequent to January 1st of the current year is not to be given a vacation with pay during that calendar year.

(h) Vacations are not cumulative and may be taken only during the calendar year within which they are due.

(i) Authorized holidays occurring within a vacation period are considered a part thereof.

(j) An employee who resigns with the usual two weeks' notice and to whom a vacation is due in the current year as of the date of resignation, in accordance with this section will be given the vacation for the current year or a corresponding pay allowance. Ordinarily at least eight months should have elapsed since the employee's last vacation before considering him eligible for a vacation at the time of resignation.

(k) Employees who are laid off will be paid for any vacation which, in accordance with this section, is due them in the current year as of the date of the lay off.

(l) An employee is to be paid for a vacation period at the rate which would have applied if the employee had worked the regular schedule during this period. Payment for the vacation period will be made in advance whenever requested by the employee.

(m) "Current year," as used herein, means any calendar year during which these Practices are in effect.

Section 5. Absences.—(a) Absences of employees on account of jury, election board, or military service should be in accordance with the following general principles:

(b) Absences are to be granted to employees who are summoned by civil authorities for jury or other court duty, and no deduction in pay is to be made for the period of such absence. Employees are expected to report for regular duties while temporarily excused from attendance at court.

(c) As service on election boards is usually voluntary, each case of absence for this reason will be considered by the Company on basis of the facts and pay will be withheld only when the circumstances indicate that such action is advisable.

(d) Employees in the National Guard when called out with their military units for the usual training periods of two weeks

or active emergency service will be allowed their regular pay, payment to continue for emergency service, however, only for such period as the state or general departmental head, as appropriate, may elect. Such absence which is paid for is not to be deducted from the regular vacation to which the employee may be entitled.

(e) Absence for training with other military or naval organizations will be permitted, subject to the needs of the Company as authorized by the state or general departmental head.

(f) Absence for personal reasons should ordinarily be of short duration and, where feasible and for due cause, will be authorized by the proper supervisor, consideration being given to current work requirements, and the reasons for the request. Permission for such absence will be requested in advance by the employee and payment made therefor when warranted by prevailing circumstances and authorized by the proper supervisor.

(g) Employees whose term of service is two years or more and who are absent due to sickness or accidental injury not arising out of or in course of employment by the Company, are to receive Sickness Disability Benefits as provided for in the Employees' Benefit Plan. Sickness Disability Benefits begin under the Plan on the eighth calendar day of the period of absence. Non-scheduled employees are to be paid for the normal work days absent during the first seven days' absence on account of such disability unless payment for such time as warranted by the circumstances in each case is disapproved by the Management Representative. Scheduled employees with two or more years Net Credited service are to be paid for scheduled time lost on account of sickness after the third scheduled working day of the first seven day period.

(h) Employees who are absent due to accidental injury, arising out of and in course of employment by the Company, are to receive Accident Benefits for the period provided in the Plan, such period starting with the first full day of absence due to injury.

(i) Employees may be granted authorized leaves of absence in accordance with the existing practices.

The foregoing Exhibit I to General Agreement dated July 30th, 1940, General Working Practices are hereby approved and accepted. Executed this the 30th day of July 1940.

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY,

By (Sd.) J. E. WARREN,

President.

SOUTHERN ASSOCIATION OF BELL
TELEPHONE EMPLOYEES,

By (Sd.) T. L. LITTLE,

President.

CONSTITUTION OF SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

PREAMBLE

The employees of the Southern Bell Telephone and Telegraph Company, Incorporated, formed in 1919 the Southern Association of Bell Telephone Employees to provide facilities for adjusting by conference and cooperation all questions affecting the employees and the Management. This relationship between the Association and the Company has been in continuous operation since that time.

Revisions in the original Constitution have been made by the employees from time to time as experience and conditions warranted and this revision is hereby adopted superseding the Constitution effective May 1934.

* * *

Page 10:

Section 2—Of President:

Any member of the Association who has been a member of the Association for at least five years shall be eligible for the office of President.

Section 3—Of Vice President:

Any member of the General Assembly, who has been a member of the Association for at least 5 years, shall be eligible for the office of Vice President.

Page 20:

Special Article:

This Constitution, as amended, shall become effective as of February 1, 1936, when and if approved by the vote of two-thirds of the General Assembly and ratified by a majority vote of two-thirds of the Locals.

PROCEEDINGS OF GENERAL ASSEMBLY AND GENERAL EXECUTIVE BOARD, SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES, FEBRUARY 1936

Section 1. Synopsis.—The 17th Annual Meeting of the General Assembly of the Southern Association of Bell Telephone Employees convened at 9:30 A. M. on Monday, February 17, 1936, in Parlor H of the Piedmont Hotel, Atlanta, Georgia.

**SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES,
FEBRUARY 1937**

**PROCEEDINGS OF THE ANNUAL GENERAL MEETINGS, GENERAL ASSEMBLY,
GENERAL EXECUTIVE BOARD, GENERAL JOINT CONFERENCE**

Triangular Emblem—Atlanta, Georgia

**Part 1: Minutes of the 18th Annual Meeting of the General
Assembly**

Monday—The 18th Annual Meeting of the General Assembly of the Southern Association of Bell Telephone Employees convened at 9:30 A. M. on Monday, February 15, 1937, in Parlor H of the Piedmont Hotel, Atlanta, Ga. Ga.

MEMORANDUM—WAGNER BILL INTERPRETATIONS

The Company can continue to pay salaries of Association officers while engaged in conferring with management and for incidental time while they are meeting among themselves before and after these conferences to discuss their presentation or disposition of the matters involved. Salaries cannot be paid by the Company while Association officers are devoting their time solely to internal affairs of the Association.

The Company cannot pay travelling, board, and lodging expenses for employee representatives while engaged in Association business.

Space for the exclusive full time use of the Association cannot be provided by the Company without proper charges. The Association should be billed for Company office space used by the General Secretary for Association business.

Association Local Meetings cannot be held on Company time.

Out-of-pocket expenses, such as stamps, stationery and supplies, cannot be borne by the Company and Company mail cannot be used for Association business.

The Company cannot permit the use of its toll lines free of charge for purely Association business. The Company cannot provide free of charge telephones used exclusively for Association business.

The expense of preparation and distribution of a limited number of minutes of Joint Conferences will be borne by the Company. The Company will discuss with the Association officers the ques-

tion of proper charges for collecting association dues and the necessary procedure for making this effective.

Revised January 1937.

789

Board Exhibit 23

NATIONAL LABOR RELATIONS ACT

MEMORANDUM FOR SOUTHERN BELL TEL. AND TEL. CO.

The National Labor Relations Act prohibits an employer from contributing financial or other support to any labor organization: "Provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay."

In view of the provisions of this Act, the following summary is provided to be observed by this Company in dealing with the Southern Association of Bell Telephone employees:

1. The Company can pay salaries of association officers while engaged in conferring with Management. The Company cannot pay salaries of association officers under the following conditions:

(a) While they are meeting among themselves before and after joint conferences to discuss their presentation or disposition of the matters involved.

(b) While association officers are devoting their time solely to internal affairs of the association.

2. The Company cannot pay traveling, board, and lodging expenses for employee representatives while engaged in association business.

3. The Company should charge a fair rental rate when members of the association use Company space for the purpose of conducting association business or for holding their monthly local meetings. These charges should be calculated on the proportional cost to the Company for the space used.

NOTE.—The Company is now reviewing with the association officers the charges for such space.

4. The Company cannot permit the use of its toll lines for association business except at full tariff rates.

5. The Company cannot provide telephones for conducting association business except at full tariff rates.

6. The Company cannot permit elections on Company time and any Company premises used for this purpose should be confined to space rented as a meeting place.

7. Company Bulletin Boards cannot be used for posting association activities, notices or bulletins.

790 **NOTE.**—The Company is now reviewing with the association officers the matter of space which they might desire to rent for Bulletin Boards.

8. The Company can pay for copies of minutes of joint conferences for distribution to employees attending the joint conference meetings. The Company cannot pay for extra copies of these minutes for distribution among other members of the association.

9. The Company mails are not to be used for association business.

10. The Company has an agreement with the association officers for making payment for the cost of collecting dues under the payroll deduction plan. The Company cannot incur this expense without making the proper charges.

11. The Company cannot engage in any activity designed to induce or prevent its employees from joining this or any other labor organization.

12. Association Local Meetings cannot be held on Company time.

13. Out-of-pocket expenses, such as stamps, stationery, and supplies for association business, cannot be borne by the Company.

14. The provisions of this Act make it illegal for an employer to dominate or interfere with the formation or administration of any labor organization, and the Management of this Company should conscientiously observe these provisions.

Revised April 1937.

791 *Excerpts from Board Exhibit No. 27*

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES FEBRUARY 1938

PROCEEDINGS OF THE ANNUAL GENERAL MEETINGS, GENERAL ASSEMBLY,
GENERAL EXECUTIVE BOARD, GENERAL JOINT CONFERENCE

Triangular Emblem—Atlanta, Georgia

Part I. Minutes of the 19th annual meeting of the General Assembly

The 19th Annual Meeting of the General Assembly of the Southern Association of Bell Telephone Employees convened at 9:30 A. M. on Monday, February 21, 1938, in Parlor H of the Piedmont Hotel, Atlanta, Georgia:

**SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES
FEBRUARY 1939**

PROCEEDINGS OF THE ANNUAL GENERAL MEETINGS, GENERAL ASSEMBLY,
GENERAL EXECUTIVE BOARD, GENERAL JOINT CONFERENCE

Triangular Emblem—Atlanta, Georgia

Section 1. Minutes of the 20th annual meeting of the General Assembly

The 20th Annual meeting of the General Assembly of the Southern Association of Bell Telephone Employees convened at 9:30 A. M. on Monday, February 21, 1938, in Parlor H of the Piedmont Hotel, Atlanta, Georgia.

**SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES
MARCH 1940**

PROCEEDINGS OF THE ANNUAL GENERAL MEETINGS, GENERAL ASSEMBLY,
GENERAL EXECUTIVE BOARD, GENERAL JOINT CONFERENCE

Triangular Emblem—Atlanta, Georgia

Section 1. Minutes of the 5th annual meeting of the General Assembly

The 5th Annual Meeting of the General Assembly of the Southern Association of Bell Telephone Employees convened at 9:30 A. M. on Monday, March 4, 1940, in Parlor H of the Piedmont Hotel, Atlanta, Georgia.

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

Emblem

CONSTITUTION AND JOINT AGREEMENT BETWEEN MANAGEMENT AND
EMPLOYEES' ASSOCIATION AS TO PROCEDURE

Amended by General Assembly, February 1937 and effective July 15, 1937. Included herein are the general rules and regulations governing the expenditure of funds.

Constitution of Southern Association of Bell Telephone Employees

PREAMBLE

The employees of the Southern Bell Telephone and Telegraph Company, Incorporated, formed in 1919 the Southern Association of Bell Telephone Employees to provide facilities for adjusting by conference and cooperation all questions affecting the employees and the Management. This relationship between the Association and the Company has been in continuous operation since that time.

Revisions in the original Constitution have been made by the employees from time to time as experience and conditions warranted and this revision is hereby adopted superseding the Constitution effective July 15, 1936.

795

Excerpts of Board Exhibit No. 31

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

Emblem

CONSTITUTION AND JOINT AGREEMENT BETWEEN MANAGEMENT AND EMPLOYEES' ASSOCIATION AS TO PROCEDURE

Amended by General Assembly, February 1938 and effective July 15, 1938. Also included herein are Rules and Regulations governing the expenditure of funds and the maintenance of the headquarters office of the Association as Prescribed by the executive board.

Constitution of Southern Association of Bell Telephone Employees

PREAMBLE

The employees of the Southern Bell Telephone and Telegraph Company, Incorporated, formed in 1919 the Southern Association of Bell Telephone Employees to provide facilities for adjusting by conference and cooperation all questions affecting the employees and the Management. This relationship between the Association and the Company has been in continuous operation since that time.

Revisions in the original Constitution have been made by the employees from time to time as experience and conditions warranted and this revision is hereby adopted superseding the Constitution effective July 15, 1937.

CONSTITUTION SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES

Emblem

Amended by General Assembly, February 1939 and effective
September 2, 1939.

Constitution of Southern Association of Bell Telephone Employees

PREAMBLE

The employees of the Southern Bell Telephone and Telegraph Company, Incorporated, formed in 1919 the Southern Association of Bell Telephone Employees to provide facilities for adjusting by conference and cooperation all questions affecting the employees and the Management. This relationship between the Association and the Company has been in continuous operation since that time.

Revisions in the original Constitution have been made by the employees from time to time as experience and conditions warranted and this revision is hereby adopted superseding the Constitution effective July 15, 1938.

CONSTITUTION SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES

Emblem

Amended by General Assembly, March 1940 and effective September 15, 1940.

Constitution of Southern Association of Bell Telephone Employees

PREAMBLE

The Southern Association of Bell Telephone Employees was formed on the 30th day of August 1935, subsequent to the passage of the National Labor Relations Act, known as the Wagner Act, supplanting a former organization of employees by the same name.

Revisions in the Constitution adopted upon the above date have been made by the members from time to time as experience and conditions warranted and this revision was approved by resolution.

of 1940 General Assembly and has been ratified by the locals as provided in the Constitution.

798

Board Exhibit 37

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

ATLANTA, GEORGIA, January 25, 1936.

To All Local Chairmen:

The proposed changes in the Constitution, copy of which was furnished your Local last October, needed, in accordance with Article XVI of the present Constitution, ratification "by a majority vote of $\frac{2}{3}$ rds of the Locals." Since there are 354 Locals in our Association this necessitated an affirmative vote from 236. We have received thus far this vote from 252 Locals and the proposed Constitution is therefore adopted and becomes effective February 1, 1936.

799

Sincerely yours,

JANE H. WILKES,
General Secretary.

800

Respondent's Exhibit 1

Summary of J. S. Kerr of the minutes of bargaining conferences between the President and Operating Vice President of the Company and the General Executive Board of the Association, the General Plant Manager of the Company and the General Plant Board of the Association, the General Traffic Manager of the Company and the General Traffic Board of the Association, the General Commercial Manager of the Company and the General Commercial Board of the Association, and the General Auditor of the Company and the General Accounting Board of the Association, from 1936-1940, both inclusive.

I have examined the minutes of the above bargaining conferences.

These minutes reflect the demands made by the Association, the discussion thereon, and the agreements reached. All of these minutes are signed by the Management and Association representatives and constitute a contract on the matters agreed to therein.

In all of these minutes, there is evidence of genuine bargaining, free and frank discussion on each side has been indulged in, and the minutes reflect conscientious effort on both sides to arrive at an agreement.

The minutes also show that in many instances, after demands had been refused by the Company, that the Association at a subsequent meeting renewed the demands with increased vigor and succeeded in reaching an agreement with the Company in respect to such demands.

These minutes show demands for higher wages, better working conditions, longer vacations, double pay for holiday work, extra pay for night work, restoration of wage cuts made during depression years, rearrangement of wage schedules to shorten period between raises, full payment for first seven days of sickness, physical examination of new employees, first-aid training, regrading of employees, double pay for Sunday work, increase in extra pay of unlocated construction crews, and that training courses be classed as regular work, as well as many other similar demands.

These minutes show that more than 60 demands made by the Association of the type and character enumerated above have been agreed to, either in whole or in part, by the Company, and from my knowledge of the Company's business, I would estimate that the annual cost to the Company of putting into effect the agreements reached with the Association, as reflected by the above minutes, is in excess of \$3,000,000.

802

Respondent's Exhibit 4

[Copy]

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

Emblem of Sabte

T. L. Little, Pres. G. M. Todd, Vice Pres. C. W. Dennis, Jr.,
Genl. Secy-Treas.

231 TRUST CO. OF GA. BLDG.,
Atlanta, Ga., February 10, 1941.

SOUTHERN BELL TELEPHONE & TELEGRAPH COMPANY.

Atlanta, Ga.

Attention Mr. J. E. Warren, President.

DEAR SIR: On January 7th last, after an examination of the records and files of Southern Association of Bell Telephone Employees, Mr. Chas. H. Logan, Regional Director Fifteenth Region, National Labor Relations Board and the Board's attorney, Mr. Warren Woods, advised the attorney and officers of this Association that a formal complaint would be filed with the Labor Board against Southern Bell Telephone and Telegraph Company seek-

ing a disestablishment order requiring the Company to cease and desist recognizing this Association as the legal collective bargaining agency of the employees of the Company. It was stated that the main ground for this complaint would be that this Association is dominated by the Company contrary to the National Labor Relations Act.

The attorneys and officers of the Association have since made a thorough investigation of the affairs of the Association and unqualifiedly assert that such a charge is utterly untrue.

Because such a charge clouds this Association's right to represent the employees of the Company and that under such circumstances the best interests of the employees may not adequately be served, the Association will not undertake to act as their collective bargaining agent pending a canvass of its membership by signed ballot.

In the meantime, it will be presumed that the rights and privileges of your employees secured in the past by the Association will not be disturbed.

It is presumed you have been advised that another labor union has been and at the present time is seeking to organize certain of your employees.

Yours truly,

GENERAL EXECUTIVE BOARD,

Southern Association of Bell Telephone Employees:

(Sd) T. L. Little, Chairman; (Sd) C. P. Hoban, Accounting Representative; (Sd) J. P. Brand, Commercial Representative; (Sd) J. P. Culp, Plant Representative; (Sd) M. F. Koeppen, Plant Representative; (Sd) Ruby Smilie, Traffic Representative; (Sd) Edna Moody, Traffic Representative; (Sd) B. O. Harmon, General Office Representative; (Sd) C. W. Dennis, Jr., General Secretary-Treasurer.

Respondent's Exhibit 5

SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY, INCORPORATED

HURT BUILDING,

Atlanta, Georgia, February 11, 1941.

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES,

231 Trust Company of Georgia Building,

Atlanta, Georgia.

DEAR SIR: This acknowledges receipt of your letter of February 10, 1941. It is noted that, pending a canvass of your mem-

bers, you will not undertake to represent the employees of this Company as their collective bargaining agent.

Yours truly,

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY,

J. E. WARREN,

President.

805

Respondent's Exhibit 6

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, INCORPORATED

HURT BUILDING,

Atlanta, Georgia, February 11, 1941.

*To All General Officers, State Heads, District Heads,
General and State Staff Heads:*

There is herewith enclosed to each of you copy of letter received by the Company from the Southern Association of Bell Telephone Employees, of date February 10, 1941, and copy of the reply of the Company of date February 11, 1941.

From this correspondence it appears that the Southern Association of Bell Telephone Employees is to canvass its members by ballot, and that another labor organization is undertaking to organize certain of the employees of this Company; also you will note that, pending the canvass of its members, such Association will not undertake to act as the collective bargaining agent of the employees of this Company.

You are therefore advised as follows:

1. You are directed and you should immediately instruct all supervisory personnel under your jurisdiction in no wise to interfere with any activities of the employees or of any labor organization or union, or in any way advise with such employees with reference to any labor organization activities, or influence any employee to join or not to join a labor organization, or as to the kind or type of labor organization which the employee or employees should or should not join, assist or become affiliated with.

All employees have an unqualified right, under the National Labor Relations Act, to exercise their free and uninfluenced choice in such matters.

2. The enclosed notices, directed to the employees of this Company, are to be posted in every Company building, whether owned or leased, on all bulletin boards therein where available, and where not available, in a prominent place therein.

3. The individual posting these notices will sign at the place provided thereon, stating his or her title and noting the date and hour of posting.

4. The individual posting these notices will, in writing, advise his or her immediate supervisor of his or her action in so doing.

Yours very truly,

(Sd:) J. E. WARREN,
President.

Respondent's Exhibit 7

TOTAL NUMBER OF NOTICES POSTED ON "RIGHTS OF EMPLOYEES"

Alabama	187
Carolinas	278
Florida	192
Georgia	299
Kentucky	306
Louisiana	268
Mississippi	299
Tennessee	344
Co. total	2173

Respondent's Exhibit 8

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

E. L. Little, Pres. G. M. Todd, Vice-Pres. C. W. Dumas, Jr.,
Genl. Secy-Treas.

231 TRUST CO. OF GA. BLDG.,
Atlanta, Ga.; February 28, 1941.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY,

Atlanta, Georgia.

Attention Mr. J. E. Warren, President.

GENTLEMEN: Referring to letter from this Association to you under date of February 10, 1941, we beg to advise you that a vote of members of this Association has been taken, and we are informed by Seals and Pennington, Certified Public Accountants to whom the ballots were returned, that ballots in favor of the Association acting as the bargaining agent for the employees have been returned amounting to more than 15,000, which number represents much more than fifty-one percent of the eligible employees of the Company.

Therefore, this Association does now ask that it be recognized as the bargaining agent to represent the employees of the Company concerning their relations with the Company.

We request that you advise us immediately to the effect that the Association will be given such recognition.

Yours very truly,

(Signed) T. L. LITTLE,
President, Southern Association of
Bell Telephone Empls.,
Chairman, General Executive Board.

TLL:P,

808

Respondent's Exhibit 9

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY,
INCORPORATED

HURT BUILDING,
Atlanta, Georgia, March 3, 1941.

Mr. T. L. LITTLE,

*President, Southern Association of Bell Telephone Em-
ployees; Chairman, General Executive Board, 231 Trust
Company of Georgia Building, Atlanta, Ga.*

DEAR SIR: This is to acknowledge receipt of your letter of February 28th stating the results of a vote taken among the employees of this Company and requesting recognition by the Company of the Southern Association of Bell Telephone Employees as the bargaining agent of its employees.

After advising with the Company's counsel, additional information is requested before either acceding to or rejecting your request. Therefore, will you please furnish the Company the following information:

1. A copy of the ballot used in voting by the employees.
2. Copies of letters, if any, directed to employees, accompanying or relating to such ballot.
3. Affidavit of a responsible member of the firm of Seals & Pennington, certified public accountants, stating in detail how and the manner in which the ballots were received, tabulated, counted and checked, together with the results of said balloting.

Please have the person making this affidavit be specific as to the method used in safeguarding the accuracy of the ballot and the method used to determine the identity of each employee casting such a ballot.

As soon as this information has been received, you will be advised immediately.

Yours very truly,

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY,
(Sd.) J. E. Warren,
President.

MARCH 5, 1941.

SOUTHERN BELL TELEPHONE &
TELEGRAPH COMPANY,
Atlanta, Georgia.

Attention Mr. J. E. Warren, President.

GENTLEMEN: Receipt of your letter of March 3, 1941, is hereby acknowledged.

Complying with your request, we herewith furnish you the following:

1. Report of Seals & Pennington, Certified Public Accountants, duly verified, showing the number of ballots received canvassed, tabulated, counted and checked by them, and showing the manner in which such ballots were received by them and the results, all as set forth and detailed in their report. A specimen form of ballot is attached to the report of the Certified Public Accountants.

2. Copy of letter dated February 7, 1941, signed T. L. Little, C. W. Dennis, and B. O. Harmon, Special Committee, and addressed "To all Association Members," copy of which was sent to each member of the Association, through the local chairmen or departmental representatives.

3. Copy of letter dated February 10, 1941, signed by the members of the Special Committee named and addressed "To each Local Chairman and Departmental Representatives in Joint Locals."

4. Copy of letter dated February 11, 1941, signed by the members of the Special Committee above named. (A copy of this letter was sent to each member of the General Assembly and each local chairman of this Association.)

5. Copy of letter dated February 12, 1941, addressed "To all Members of the Association" and signed "General Executive Board." (Copy of this letter was mailed to each member of the Association.)

6. Copy of letter dated February 17, 1941, and signed by the members of the Special Committee above named and addressed "Dear Officer." A copy of this letter was mailed to each member of the General Assembly and each local chairman.

7. Copy of letter dated February 18, 1941, addressed "To all Members Southern Association of Bell Telephone Employees" and signed "General Executive Board Southern Association

810 of Bell Telephone Employees, T. L. Little, Chairman, C. P. Hoban, Accounting Representative, J. P. Braud, Commercial Representative, J. P. Culp, Plant Representative, M. F. Koeppen, Plant Representative, Ruby Smilie, Traffic Representa-

tive, Edna Moody, Traffic Representative, B. O. Harmon, General Office Representative, C. W. Dennis, Jr., General Secretary-Treasurer." A copy of this was mailed direct to each member of the Association.

We believe that the above supplies all of the information requested in your letter, and we therefore urge that our request, contained in our letter of February 28, 1941, be acted upon favorably without further delay.

Yours very truly,

(Sd.) T. L. LITTLE,
*President, Southern Association
of Bell Telephone Employees.*

TLL:P

Copies to: Mr. J. A. Branch, Attorney, Hurt Building, Atlanta, Georgia; Judge Frank A. Hooper, Jr., Attorney, 630 Citizens & Southern National Bank Building, Atlanta, Georgia.

811

Respondent's Exhibit 11

Thos. D. Seals, C. P. A.

Geo. A. Pennington; C. P. A.

• SEALS & PENNINGTON

ACCOUNTANTS

• ATLANTA, GEORGIA, March 5, 1941.

SOUTHERN ASSOCIATION OF

BELL TELEPHONE EMPLOYEES.

Atlanta, Georgia.

GENTLEMEN: We have examined the ballots received by us through the United States Mails from your members through March 4, 1941.

These ballots (a specimen of which is hereto attached) constitute votes on the following two questions:

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.?

Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

We have made a careful test check of these ballots against the lists of employees shown on the lists of pay roll deductions showing your membership which was furnished us by you representing the deductions made from the pay rolls of the Southern Bell Telephone & Telegraph Company, and the cards representing new applications for membership in your Association.

We hereby certify that of the 17,608 ballots reported to have been mailed, 15,969 have been received by us and tabulated as follows:

15,356 members answered "Yes" to these questions:
812 Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

95 members answered "no" to this question: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? and answered "Yes" to this question: Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

170 members failed to answer this question: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? and answered "Yes" to this question: Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

165 members answered "Yes" to both of these questions, but failed to sign their ballots: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

16 members answered "No" to both of these questions:
813 Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

23 members answered "Yes" to this question: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? but failed to answer this question: Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

64 made various remarks or failed to properly answer the questions asked by the ballots.

80 ballots mailed out were returned undelivered.

The ballots received by us, as above stated, are in our possession.

Respectfully submitted,

SEALS & PENNINGTON,

By G. A. PENNINGTON, C. P. A.

814 STATE OF GEORGIA,

County of Fulton.

Before the undersigned authority, who is duly authorized to administer oaths, personally appeared G. A. Pennington, who being duly sworn and on oath, says:

That he is a Certified Public Accountant and is a member of the firm of Seals & Pennington, Certified Public Accountants, Atlanta, Georgia, having an office in the Citizens & Southern National Bank Building, Atlanta, Georgia.

That the foregoing report to Southern Association of Bell Telephone Employees under date of March 5, 1941, is true and correct.

Deponent further says that the ballots referred to in said report were received by due course in the United States Mails and delivered to the office of Seals & Pennington and were opened, canvassed and tabulated by the firm of Seals & Pennington, Certified Public Accountants, and that the originals of the ballots so received are now in the possession of Seals & Pennington.

(Sd.) G. A. PENNINGTON.

Sworn to and subscribed before me this 5th day of March 1941.

[SEAL]

(Sd.) IRENE J. TAYLOR,

Notary Public.

815

NOTICE

THIS BALLOT MUST BEAR THE SIGNATURE OF THE MEMBER VOTING AND SHOULD BE SEALED AND RETURNED IMMEDIATELY

Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? Answer: Yes ☐ No ☐.

Do you desire to continue your membership in Southern Association of Bell Telephone Employees? Answer: Yes ☐ No ☐.

(Signature)_____
(Date)

816

(In accordance with association practices do not distribute during working hours.)

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES.

*Atlanta, Georgia, February 7, 1941.**To All Association Members:*

As you know from your Local meetings and from readings of the minutes of the Special General Assembly of January 15, 1941, the Regional Director, Fifteenth Region, of the National Labor Relations Board requested that we consent to an order of disestablishment on the grounds that our Association is Company

dominated, contrary to the provisions of the Wagner Act. These charges of Company domination were preferred by the International Brotherhood of Electrical Workers (IBEW), an affiliate of the American Federation of Labor, who while professing to be friends of certain of our members took advantage of the friendship and sought to have our Association disestablished. We all know the charges by the IBEW are utterly false and were merely brought up to force the Labor Board to instigate an investigation of our Association.

These charges have served to bring us closer together rather than to separate us and they have brought out very emphatically that we telephone employees will have nothing but our own independent organization. To date we have no record of a single resignation from the Association as a result of the IBEW activities while on the other hand more than 700 eligible employees who have not heretofore seen fit to affiliate with us have joined our Association in order that they might do their part in this fight. Applications for membership are still pouring in at the rate of 15 to 20 per day. If you have any fellow employees who are not members, who are eligible and now desire to affiliate with us, please see that their application for membership is turned in at once.

We have always known that we had a fine organization, but did not realize its true greatness and strength until this fight was forced upon us. Our accomplishments regarding wage treatments, pension and benefit plans, vacation practices, working practices, working conditions, etc., are something you can justly be proud of and should guard zealously and we challenge any comparable organization in the country to show results that will begin to approach ours. We don't strike blindly in the dark, but instead get our facts together and bargain on a well organized, sensible and intelligent basis. Furthermore, we recognize the right of an individual member as well as the right of a group of members. All officers of our Association are employees of the Company which enables them to be thoroughly familiar with the problems with which we are confronted and the justifiable reasons why such problems should and must be corrected.

The benefits we might obtain through the outside organization would be meager when compared to the many advantages we are now obtaining through our Association. For these fewer benefits we would have to pay exorbitant and unreasonable initiation fees and monthly dues and be subject to special assessments of varying amounts.

The Association is still operating and is acting as your collective bargaining agency and we have not been disestablished as

some would lead you to believe. All the investigations and negotiations with the Labor Board have to date been handled on an informal basis. Should formal charges be filed we feel we can show the Labor Board evidence which should be sufficient to prove that we are not Company dominated.

Yours very truly,

T. L. LITTLE,
C. W. DENNIS, Jr.,
B. O. HARMON,
Special Committee.

817 SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES,
Atlanta Georgia, February 10, 1941.

To Each Local Chairman and Departmental Representative in Joint Locals:

DEAR OFFICER: The enclosed material is of utmost importance to each of our members and should be placed in their hands at once.

In the event you know of any members from any department who are temporarily located in your exchange and for this reason would not receive a copy until they return to their permanent location please furnish them with one.

Also, rush copies to any members under your jurisdiction who are located in nearby exchanges.

Yours very truly,

T. L. LITTLE,
C. W. DENNIS, Jr.,
B. O. HARMON,
Special Committee.

818 SOUTHERN ASSOCIATION OF BELL
TELEPHONE EMPLOYEES,
Atlanta, Georgia, February 11, 1941.

To All Local Chairmen:
To All Division Chairmen:

DEAR —: This is intended as a personal letter to you, and we hope that you will regard it as such and will read it very carefully as it carries an important message and one that may vitally affect the future of our Association. It is sent to you as advance information so that you will be in position to explain the plan outlined in this letter when it is generally announced to the membership. It should be kept strictly confidential until such time.

As you know, there was discussed at the recent meeting of the General Assembly the threat which had been made, to the effect that a formal complaint would, or might be, filed before the Labor

Board against the Southern Bell Telephone & Telegraph Company charging that our Association in some way is under Company domination and is not a legal bargaining agency under the terms of the Wagner Act to represent its members in dealing with the management. These charges, as you know, were initiated by members of the I. B. E. W., affiliated with the American Federation of Labor; and, as you also know, it was the unanimous opinion of the members of the General Assembly that these charges are utterly without foundation in truth and that any such complaint looking toward dissolving this Association or disqualifying it as the representative of its members as the bargaining agency with the management should be fought and resisted to the utmost.

Following this meeting of the General Assembly, the writers of this letter held many conferences among themselves and with the attorneys representing the Association, with a view to preparing to intervene and ask to be heard if and when such complaint shall be filed against the Company, which would of course, if decided adversely to the Company, vitally affect the very life and existence of our Association.

It was at first decided to undertake to canvass as far as possible the individual members of the Association by means of questionnaires to get from the members free, full and candid expressions as to whether or not they were in any wise influenced by the management in becoming or remaining members of the Association or whether they acted freely and of their own accord and without any compulsion on the part of the Company. The purpose of this was two-fold:

First: To ascertain the present wishes of the members; and, Second: To try to bring the facts that might be developed before the Labor Board if a complaint shall be filed.

However, it was soon realized that it would be impossible for anything like all, or even a majority, of the members to be given a chance to express themselves by this method within any sort of a reasonable time. Therefore, it was decided that some more practical method should be adopted and one which would give every member an opportunity to express his or her wishes and to

do it in a way so that it could not be said that such member
 819 was acting under any sort of compulsion or improper influence whatsoever. Our attorneys advised that this be done and have fully approved the plan which has been adopted and which will be outlined below. After the plan had been considered and discussed by the writers of this letter and the attorneys of the Association, a meeting of the General Executive Board was called in order that the plan might be laid before the Board and thoroughly considered and acted upon by it. The Board met in Atlanta on February 8th and continued in session for prac-

tically two days considering and discussing in every detail the plan which had been suggested and which is outlined below, and the Board unanimously approved the plan.

The purpose and object of the plan is to give each and every member of the Association an opportunity by his or her individual vote to say whether or not he or she desires the Association to continue to act as the bargaining agent of the members, and to say whether he or she desires to continue as a member of the Association; and, in order that there might be no semblance of compulsion, it was thought best that pending the vote of the members the Association should for the time being cease even to act as the bargaining agent of the members and wait until at least fifty-one per cent of the eligible employees should again express their wishes and desires to the effect that the Association should act as the bargaining agent.

Therefore, following the meeting of the General Executive Board on February 10th 1941, a letter signed by all of the members of the Board was sent to the Company notifying the Company to the fact that such a ballot would be taken and that pending the vote, the Association would not act as a bargaining agent, and expressing the hope and belief that pending this vote the Company would not deprive any employee of the benefits which have heretofore been secured from the Company on behalf of the employees.

Pursuant to the action of the General Executive Board, ballots are now being prepared and will be sent out to the members (one to each member of the Association) for each member to express his or her wishes with respect to the matters above mentioned; that is, whether the Association shall continue to act as a bargaining agent for the members and whether or not he or she desires to continue his or her membership in the Association. These ballots should be ready to be sent within the course of a week or possibly less. The work of preparing the ballots and addressing envelopes, as you will realize, is an enormous job and will necessarily take several days.

In the meantime, a letter outlining the plan is being written to each member and mailed to such member individually so as to insure, as far as possible, that all of the members will receive it. Your copy of that letter will reach you in a few days.

You, of course, will realize, even without our saying it, the great and vital importance to the Association of the vote that is to be taken, and you will realize the importance of getting the members to vote. Of course, we all hope and earnestly believe that practically all votes cast will be in favor of the Association, as it seems to be undoubtedly the almost unanimous sentiment of the members

of the Association that the Association shall continue and be allowed to continue to act for them and that they shall not be forced against their wills to join some other organization such as the I. B. E. W.

It is the right and privilege of all of us who feel that the Association be allowed to continue to represent its members to urge all of our fellow members to vote and to vote promptly. Even if any of the members should desire to vote against continuing the Association as the bargaining agent or against retaining his or her membership, it is still important that such members vote and express their wishes. As a matter of fact, any failure to vote is practically, in effect, a vote against the Association, so please make it your business to urge all of the members with whom you come in contact to be sure to vote; and let us impress you also with the fact that it is equally as important that you see that each member understands that he or she is free to vote his or her real wishes and that no matter how he or she votes no discrimination can, or will be, made against him or her as a result of such vote.

Efforts may, and probably will, be made in some localities by outsiders to mislead the members into thinking that this action on the part of our Association is a sign of weakness or that the Association was forced to do this and to cease acting for the time being as the bargaining agent. No such thing is even remotely true. This action is being taken because we want to be in a position to convince the Labor Board, and the whole world for that matter, that it is the desire of the overwhelming majority of the eligible employees of the Company that this Association should be allowed to continue to serve its members and protect their rights as employees.

We do not anticipate that it will be more than two weeks at the outside before such a majority will have expressed themselves; and we have every right to hope and believe that such an expression will once and for all terminate the agitation which has been instigated and carried on by outside people and groups for purely selfish motives.

In closing, let us again urge you to make it your business to help see that the members vote, and to see that they understand the situation as we have outlined it in this letter.

Yours very truly,

T. L. LITTLE,
C. W. DENNIS, JR.,
B. O. HARMON,
Special Committee.

SOUTHERN ASSOCIATION OF BELL
TELEPHONE EMPLOYEES.*Atlanta, Ga., February 12, 1941.**To All Members of the Association:*

DEAR MEMBER: As you know, the Regional Director and the Attorney of the Fifteenth Region of National Labor Relations Board have advised us that formal charges may be filed against Southern Bell Telephone and Telegraph Company upon the ground of alleged Company domination of your Association. We all know these charges of Company domination are utterly false and were instigated by the International Brotherhood of Electrical Workers, an affiliate of the American Federation of Labor, in order to force the Labor Board to make an investigation of your Association. We are told that the charges are based upon certain practices in effect by the Company prior to passage of the Wagner Act (which were legal then, but subsequently prohibited by the Act) and also upon certain acts allegedly done prior to the establishment of your present Association.

This matter has been placed fully before your General Assembly, which has by unanimous vote refuted all charges of Company domination. Your General Assembly, in the belief that you desire to have an independent association of employees, has made plans to vigorously contest these charges.

In the interest of truth, however, your officers desire that there now be given to each member an opportunity to freely and voluntarily express a wish or desire concerning this Association as the representative of the employees for collective bargaining. We again remind you of the provisions of the Wagner Act, and desire that your wishes be clearly expressed with full knowledge on your part that the law does not permit an employer to favor or support any particular organization, or type of organization, as the representative of the employees, over any other particular organization or type of organization.

To the above end, your officers are having ballots prepared and mailed to you so that you may freely and voluntarily express your desires. This letter is written to urge that, as soon as you receive your ballot, you immediately mark it and return it to the Certified Public Accountant designated thereon, for purposes of tabulation. Should the tabulation of these ballots show an affirmative vote by a majority of the eligible employees of the company, your Association will continue to act as the representa-

tive for collective bargaining with the Company, pursuant to the terms of the Wagner Act.

Your very truly,

GENERAL EXECUTIVE BOARD.

P. S.—Your ballot will be sent to the same address to which this letter is sent. If you do not receive it by February 22, 1941, please write to Mr. C. W. Dennis, Jr., General Secretary-Treasurer, 231 Trust Company of Georgia Building, Atlanta, Ga.—G. E. B.

822

SOUTHERN ASSOCIATION OF BELL
TELEPHONE EMPLOYEES.

Atlanta, Georgia, February 17, 1941.

DEAR OFFICER: As information to you, the letters to all members containing the ballots in connection with the canvass of our Association membership as outlined in our letter to you of February 11, 1941, have been completed and are about ready for mailing. The ballots will be mailed to each employee of the Company who was a member of the Association as of February 18, 1941, according to the General Headquarters Office records and should be in the members' hands by Wednesday, February 19, 1941.

After the first mailing of ballots and for the duration of the canvass, ballots will be sent to new members as fast as their application cards are received in order that they may also participate in the voting. As an aid in this matter please rush application cards to our General Headquarters Office as fast as the new members are taken into our organization.

It is most important that every member expresses freely his desire in this ballot and to this end we should like for you to see, insofar as possible, that every member receives his or her ballot, votes and returns it at once to Seals and Pennington, Atlanta, Georgia, the public accounting firm who will tabulate the results. This check up can be made a number of ways such as through local meetings, personal contacts, special committees, etc.

Special attention should be given towards determining that members absent due to sickness, vacations, etc., receive their ballots and vote. In case a member fails to receive his ballot by Saturday, February 22, the matter should be referred by letter to Mr. C. W. Dennis, Jr., General Secretary-Treasurer, 231 Trust Company of Georgia Building, Atlanta, Georgia.

The enthusiasm shown by our members in having the opportunity to again express their desires towards continuing their affiliation with the Southern Association of Bell Telephone Employees and to do something to aid in the fight to keep out the

International Brotherhood of Electrical Workers has been most gratifying and encouraging and we have every reason to believe the result of the canvass will be overwhelmingly in favor of our Association. The signing up of new members also continues at a rapid pace and a new high was reached Saturday, February 15, when 73 application cards were received. Your cooperation and untiring efforts have been highly instrumental in obtaining these most favorable results and through such continued efforts on your part we expect to win this fight for the life and existence of our Association and end once and for all the agitation which has been instigated and carried on by outside organizations for purely selfish motives.

Yours very truly,

T. L. LITTLE,
C. W. DENNIS, Jr.,
B. O. HARMON,

Special Committee.

P. S.—We are also enclosing copy of General Executive Board's letter of February 10, 1941, to Mr. J. E. Warren, President, Southern Bell Telephone & Telegraph Company, Inc., S. C.

823 SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES

FEBRUARY 18, 1941.

*To All Members Southern Association of Bell Telephone
Employees:*

Dear Member: The attorneys and officers of your Association have been advised that a formal complaint would, or might be filed before the National Labor Relations Board against the Southern Bell Telephone and Telegraph Company charging the Company with dominating this Association and seeking an order requiring the Company to cease recognizing the Association as the collective bargaining agency of the employees of Southern Bell Telephone and Telegraph Company.

You know and we know this charge is utterly untrue. The Association has accepted the challenge and is preparing vigorously to fight any such unfair charge through the highest courts if necessary.

With this charge pending, it is nothing but fair that you should be fully advised and be given a chance freely to express your will and choice of a labor organization which you desire to represent you. A ballot is enclosed containing two questions which you should answer either "yes" or "no." For your convenience in voting, the ballot is printed on the inside of a stamped envelope

addressed to the firm of Seals and Pennington, Certified Public Accountants. This firm will open and tabulate the ballots and certify only the results to the Association.

Regardless of how you vote, do so as soon as possible, and forward your ballot to the Certified Public Accounting firm shown thereon.

This is your absolute right. Exercise it freely and voluntarily but don't delay.

We are absolutely confident that it is the practically unanimous desire of the members for this Association to continue as their collective bargaining agency. We are giving this opportunity to them to express freely these wishes. Until the authority of this Association is confirmed by the members by this ballot, the Association will not act as the bargaining agent.

Yours truly,

GENERAL EXECUTIVE BOARD.

Southern Association of Bell Telephone Employees:

T. L. Little, Chairman; C. P. Hoban, Accounting Representative; J. P. Braud, Commercial Representative; J. P. Culp, Plant Representative; M. F. Koeppert, Plant Representative; Mrs. Ruby Smilie, Traffic Representative; Miss Edna Moody, Traffic Representative; B. O. Harmon, General Office Representative; C. W. Dennis, Jr., General Secretary-Treasurer.

824

Respondent's Exhibit 12.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY,
INCORPORATED

HURT BUILDING,

Atlanta, Georgia, March 6, 1937.

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES.

231 Trust Company of Georgia Building, Atlanta, Georgia.

Attention T. L. Little, President.

DEAR SIR: This acknowledges your letter of March 5, in reply to letter of this company of March 3.

From the records of this company and the evidence furnished by you, it is established that you represent a majority of the employees of this company for collective bargaining purposes and therefore you are entitled to recognition under the National Labor Relations Act.

Consequently you are advised that, effective this date, you are recognized as the authorized collective bargaining agent of the employees of this company.

Yours very truly,

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY,

(Sd.) By J. E. WARREN,
President.

825

Respondent's Exhibit 13

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY,
INCORPORATED

HURT BUILDING,

Atlanta, Georgia, March 6, 1941.

To All General Officers, State Heads, District Heads, General and
State Staff Heads:

Supplementing information heretofore given you with reference to the status of the Southern Association of Bell Telephone Employees; please be advised that the Association addressed a letter to me dated February 28, copy of which is attached. On March 3, I replied in accordance with copy of letter attached.

Today I received from the Association a communication, accompanied by certain data, among which was a certification from Seals and Pennington, Certified Public Accountants of Atlanta, Georgia, which shows the result of a ballot taken among the employees of the Company and the questions balloted upon, a copy of which certification is attached.

This communication also contained a request that the Association be recognized at once as the bargaining agent of the employees of the Company.

In reply, I addressed a letter to the Association on behalf of the Company, copy of which is attached, recognizing it as such bargaining agent.

Please be governed accordingly.

Yours very truly,

(Sd.) J. E. WARREN,
President.

826

Association exhibit 7

RESOLUTION No. 1

Whereas the present Constitution of the Southern Association of Bell Telephone Employees does not provide for assessment of dues to operate the Association; and

Whereas the passage of the Wagner Labor Relations Bill prohibits the Southern Bell Telephone and Telegraph Company from further contributing to the financial support of the Association to any degree, and the Association is threatened with impairment, an emergency is declared to exist.

Be it therefore resolved that pending the adoption of the revised Constitution the President of the Association be authorized to assess dues as follows: For male members 10 cents weekly. For female members 5 cents weekly.

Employees paid semimonthly shall pay an equivalent amount each pay day so that their annual payment shall equal those of weekly paid employees.

Be it further resolved that if this Resolution is adopted as hereinafter provided the President of the Association be authorized to negotiate with the Management for the collection of the above dues by means of salary deductions.

Be it further resolved that each of the General Executive Committees elect one of their members, together with a member from the General Office Representatives, to serve with the President as a temporary committee to—

(a) Develop rules and regulations covering the allocation of funds created through the collection of dues to the several divisions; and

(b) Develop suitable rules for the administration of the general fund, suitable regulation being developed by each of the Division Executive Committees for the administration of the funds allocated to each division.

The provisions of this Resolution shall become effective if and when approved by a majority vote of a majority of the Locals, either by special or regular meeting or by canvassing their membership.

827 In United States Circuit Court of Appeals, Fifth Circuit

No. 10076

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

versus

NATIONAL LABOR RELATIONS BOARD

Argument and Submission

May 4, 1942

On this day this cause was called, and, after argument by James A. Branch, Esq., for petitioner, and Ernest A. Gross, Esq., Associ-

ate General Counsel for National Labor Relations Board, respondent, was submitted to the Court.

828 In United States Circuit Court of Appeals, Fifth
Circuit

No. 10078

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

versus

NATIONAL LABOR RELATIONS BOARD

Argument and Submission

May 4, 1942

On this day this cause was called, and, after argument by Marion Smith, Esq., for petitioner, and Ernest A. Gross, Esq., Associate General Counsel for National Labor Relations Board, respondent, was submitted to the Court.

829 In United States Circuit Court of Appeals
for the Fifth Circuit

No. 10076

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES, PETITIONER

versus

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 10078

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, PETITIONER

versus

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petitions for Review of an Order of the National Labor Relations Board, Sitting at Washington, D. C.

Opinion of the Court

Filed June 30, 1942

Before HITCHESON, HOLMES, AND McCORD, Circuit Judges

HITCHESON, Circuit Judge: This is another proceeding of the kind which, in form a complaint by the Board against the em-

ployer, is in design and substance an attack upon an unaffiliated organization, hereafter called Association, formed and chosen as representative by an overwhelming majority of the employees, the membership at the time of the hearing being 17,775 out of a possible eligible list of 20,000, in favor of a nationally affiliated labor organization which wants to organize and represent them. It has its spring in the successful efforts of the national organization as a part of its organizational campaign to enlist the Board as accuser.

Its result, if the Board as accuser has been advocate enough to induce itself as judge to decide the issue wrongly, that is, contrary to the real, the free wishes of the employees whose rights and not the rights of labor organizations it is the purpose of the statute to protect, will defeat the employees in the exercise of the very rights the act guarantees them.² Because this is so the Association has intervened, vigorously denying the charges of company dominance, and as vigorously asserting that it represents the free action and choice of the employees. Since therefore the order bears heavily not on the employer but on the employees, it may not be too carefully kept in mind nor too often declared that what the statute defines and prohibits as an unfair labor practice on the part of the employer, is not an atmosphere of friendliness, a sense of mutual interest between employer and employee.³ What it enjoins the employer not to do, is (1) to interfere with, restrain or coerce employees in the exercise of their rights to self-organization, to form, join or as-

¹ The controversy here is not, as in so many cases of this kind, one of long drawn out protest of and objection to the unaffiliated organization with the company sponsoring one and opposing the other organization. Upon this record until 1940, no objection or protest was ever voiced by any of the employees. Then it was that a few employees at Shreveport alone, undertook with the help of Mr. Williams, president of the Louisiana State Federation of Labor and of Mr. Walker, International representative of the International Brotherhood of Electrical Workers, to perfect an Electrical Workers Local Organization at Shreveport. A conference between Mr. Williams, Mr. Walker, and a group of Shreveport telephone operators was held in Mr. Williams' office and a charter was applied for, for a Shreveport local, and the local was installed on December 4th. Almost immediately thereafter on December 17, 1940, Walker, as part of his campaign for organization, filed with the Board a charge, and on January 15, 1941, an amended charge, covering not merely the Shreveport employees who had contacted him but all of the employees throughout the Southern Bell Telephone System in the States of North Carolina, South Carolina, Florida, Georgia, Alabama, Mississippi, Louisiana, Tennessee, and Kentucky. The charge was: that the company on or about August 26, 1935, sponsored and caused to be formed among its employees a labor organization, to wit, the Association, that contracts are in effect between the respondent and the Association covering all the units of respondent's operations, and that because of the respondent's domination of the Association, all such contracts now in effect are invalid. The Board sponsorink the charge filed a complaint, determined it against the Association and now seeks enforcement of its order to disestablishment.

² It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. (July 3, 1935, c. 472, § 1, 45 Stat. 449) Sec. 151, (Title 29 U. S. C. A., Note 5, page 549 412 F. (2d) 288)

³ We do not interpret the Act as absolutely requiring employees to adopt a militant attitude in the exercise of their guaranteed rights. The declaration of policy makes it adequately clear that Congress was and is still seeking a friendly adjustment of industrial dispute. Dupont Co. v. N. L. R. B., 116 F. (2d) 288.

sist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or for their mutual aid and protection, and (2) to interfere with the formation or organization of any labor organization or contribute financial or other support to it. It nowhere provides, and there is no warrant in it for the view, that preference by employees for and their selection of an unaffiliated as against a nationally affiliated organization, raises any presumption that this preference was coerced or purchased by the employer. Indeed the statute goes on a presumption exactly the contrary of this, that employees have the intelligence and character requisite for self-organization either by joining or assisting a labor organization, or forming one of their own. We and other courts⁴ have pointed out the dangers to the guaranteed rights of employees inherent in a procedure which permits one of the organizations striving for the mastery over the other, to obtain the sponsorship of the Board and enlist it as⁵ accuser to, in effect, prosecute the other organization before the Board as Judge.⁶ And we and other courts have made it clear that in its capacity as accuser the Board under the genius of our institutions is held to the same burdens and obligations of proof as any other litigant who takes the affirmative. It may not, by accusing, put the accused upon proof. As accuser it must prove its charge. In its capacity as a trier of facts the Board stands on the footing of a jury. Like a jury it must be impartial. Like a jury it may not make findings without evidence to support them, and as in the case of a jury it is for the courts to say whether there is or is not evidence in support. When it is clear as here that the material evidence is entirely without dispute, that, in short, the ultimate, or what the Board calls its concluding, findings are based not upon conflicting but upon nonconflicting evidence,⁷ our determination as to whether the Board's findings must stand or fall, must not rest upon whether the Board deems that the inferences it drew are supported by substantial evidence. It must rest upon the determination by this court, under the settled rules which govern jury verdicts, whether the undisputed facts are in law capable of fairly giving rise to the fact inferences the Board has drawn, that is, whether reasonable minds having no interest as accuser or otherwise in the result but

⁴ *Magnolia Petroleum v. N. L. R. B.*, 112 F. (2d) 543; *Humble Oil & Refining Company v. N. L. R. B.*, 113 F. (2d) 85; *Dupont v. N. L. R. B.*, 116 F. (2d) 388; *Staley Mfg. Co. v. N. L. R. B.*, 117 F. (2d) 868.

⁵ We have pointed out that the statute does not make "the Board either guardian or ruler over the employees but is only empowered to deliver them from restraint at the hand of the employer which exists." *Humble Oil v. N. L. R. B.*, 113 F. (2d) 67.

⁷ The evidence in the case is lengthy but free from substantial conflict. The disagreement between Board, petitioner, and the intervenor, is not over what the record establishes as done and said, but over the Board's conclusions as to the effect under the act of what was done and said.

wholly impartial, could, upon the evidence, have legally and fairly drawn the fact inferences, made the fact findings, which the Board did make.

Further, while the act authorizes the Board if it shall find that any person is engaging in any unfair labor practice, to
833 issue an order requiring such person to cease and desist therefrom, and to take such affirmative action * * *

as will effectuate the policies of this chapter, we and other courts from the beginning have pointed out that the functions of courts in the operation of the act is by no means perfunctory. Upon them rests the final judicial responsibility. From them emanates the sole authority for making the Board's orders coercively effective. This doctrine of the respective function of court and Board as fixed in the statute has been affirmed and reaffirmed by the Supreme Court.⁸ The statute, Section 160 (e) provides: "That the jurisdiction of the appropriate court of appeals shall be exclusive and its judgment and decree shall be final subject only to review by the Supreme Court." In *Southern Steamship Company v. N. L. R. B.* — U. S. —, April 6, 1942, the Supreme Court has recently given vital support to this view. Setting aside an order of the Second Circuit Court of Appeals enforcing an order of the Board, reinstating certain striking sailors, the court said: "Section 10 (c) of the National Labor Relations Act permits the Board to require an employer who has committed an unfair labor practice to take such affirmative action, including reinstatement of employees . . . as will effectuate the policies of the Act." This authorization is of considerable breadth, and the courts may not lightly disturb the Board's choice of remedies. But it is also true that this discretion has its limits, and we have already begun to define them. *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240; *Republic Steel Corp. v. National Labor Relations Board*, 311 U. S. 7. A complete defini-

tion of course was not and could not have been attempted in
834 those cases. Nor will it be attempted here. *It is sufficient for this case to observe that the Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an*

⁸ *N. L. R. B. v. Bell Oil & Gas*, 91 F. (2d) at 514; *N. L. R. B. v. Ford Motor Company*, 119 F. (2d) at 330; *N. L. R. B. v. Dixie Motor Coach*, — F. (2d) —.

⁹ *Consolidated Edison Co. v. N. L. R. B.*, 305 U. S. 197; 56 S. Ct. 296, 83 L. Ed. 126; *N. L. R. B. v. Fansteel Corp.*, 306 U. S. 240, 59 S. Ct. 490, 83 L. Ed. 627, 123 A. L. R. 599; *N. L. R. B. v. Newport News, etc., Co.*, 308 U. S. 241, 60 S. Ct. 263, 84 L. Ed. 219; *Republic Steel Corp. v. N. L. R. B.*, 311 U. S. 7, 61 S. Ct. 77, 85 L. Ed. —; *N. L. R. B. v. Bradford Dyeing Ass'n*, 310 U. S. 318, at page 342, 60 S. Ct. 918, at page 930, 84 L. Ed. 1226.

administrative body that it undertake this accommodation without excessive emphasis upon its immediate task. This was the kind of consideration for which the present case called." [Italics supplied.]

It is therefore for this court before ordering enforcement of the Board's order, in the performance of its function under the statute to determine for itself not blindly but in the exercise of an informed discretion, first, whether the findings are supported by the evidence and second, whether the Board's orders are, within the reasonably broad discretion conferred by the act, appropriate to effectuate its policies, or constitute an abuse of that discretion.

Examining the Board's concluding findings, and its order, in the light of these principles and of the record in the case, we think it clear that its conclusion that petitioner dominated and interfered with the administration of the Association and interfered with, restrained and coerced its employees in the exercise of their guaranteed right of self-organization and the choice of their bargaining representative, is without support in the evidence. We think it clear too that the order of the Board requiring the company to withdraw recognition from and disestablish the Association as representative of the employees is not an exercise but an abuse of the discretion confided in it. It is not appropriate to effectuate, it defeats the policies of the act. For to give it

effect will, on evidence not at all supporting the conclusion drawn, deprive the employees who have overwhelmingly and freely formed and chosen the Association as their representative, in the exercise of their rights of self-organization of the very rights the statute was enacted to guarantee to them. No case has been cited to us, we have found none, where the record is so completely lacking in any evidence of antiunion activities, antiunion bias on the part of the employer; none where it shows such scrupulous recognition, such earnest efforts to ascertain and abide by the obligations imposed by the act, and such complete avoidance of any act or word from which domination or interference by the employer could be inferred; none on which there was such complete absence of even an atmosphere of seated purpose or preference for one labor organization over the other, or for any; none in which the evidence more positively and beyond question showed that the employees had freely and without any interference, coercion, restraint, or even persuasion, on the part of the employer, selected their bargaining representative. There is no claim that the company has ever discriminated against any employee or organization of employees on account of any labor activities or on account of an employee joining or not joining any labor organization. There is no claim that it or any of its supervisory personnel has in any wise intimidated, coerced

or used force or threats thereof, or offered any inducements to any of its employees for or on account of any of its employees' labor organizational activities, or on account of any of them joining or not joining any labor organization. Indeed, during the trial of the case when the company's counsel was undertaking affirmatively to prove that nothing of the kind had ever occurred, the attorney for the Board, made the following statement: "Mr.

Examiner, I object to all of these things. The complaint here is clear and charges one thing; that is, domination of the Association and I have not charged and do not now charge and will not charge that the company has discriminated against any
836 employee for union membership or that it has violated any section of the Act other than 8 (1) and 8 (2)." The proof makes it completely clear; that since the passage of the Act, the company and its employees have sedulously endeavored to conform to it, and that except in respect of one or two acts of minor officials, which were promptly repudiated, there has been no departure by the company or any of its employees from this attitude; that the old Association has been completely superseded by the present one, formed under a new constitution; that the company, because of the effort at organization of the rival union, declined to recognize the Association further without an election; and that there was an election with an overwhelming number of the employees, more than 4/5ths of the whole, voting for the Association. Notwithstanding these undisputed facts, the Board's position, consistently maintained throughout the litigation, first as accuser, next as judge, and now as suitor litigant seeking a decree of enforcement, is simply this, that the Association was and remained tainted and could not represent the employees because there had been no sufficiently clean break away from the old, to establish a new Association, by a complete dissolution and abandonment of the old and a fresh start from scratch. In short, the Board, extracting from statements made in opinions of this court and the Supreme Court appropriate to the cases,² but on
837 facts wholly different from these, a rigid formula, and standing upon its application here, insists that only by compliance with such formula can the company taint be purged, a new start made. The statute prescribes no such formula. Nei-

² In *N. L. R. B. v. Newport News*, 308 U. S. 250, the court affirming the right of the Board to enter an order disestablishing an Association as representative when that was the only way to purge it of company influence said, "As pointed out in *N. L. R. B. v. Pa.*, 303 U. S. 261, disestablishment of a bargaining unit previously dominated by the employer may be the only effective way of wiping the slate clean by affording the employees an opportunity of starting an Association, the adjustment of their relations with the employer." The same thing is true of *N. L. R. B. v. Falk*, 308 U. S. 453; *Heinz v. N. L. R. B.*, 311 U. S. 514; *N. L. R. B. v. Link Belt Company*, 311 U. S. 584.

In our case, *N. L. R. B. v. Brown Paper Mill*, 108 F. (2d) 867, it appeared that in the beginning of an organizational campaign by a nationally affiliated labor union, the management frankly declared, that it never had had and does not want to have its

whether the Board nor the courts may do so. Whether an Association chosen by the employees is or is not company dominated or supported or if it began that way, has been urged of that faint, must be determined in each case on its own facts. Similar attempts in two quite recent decisions to decide cases under the Wage & Hour Act by formulas were rejected by the Supreme Court. In *Kirschbaum v. Walling*, June 1, 1942, where the question was whether the case was within the Act, the court said: "To search for a dependable touchstone by which to determine whether employees are engaged in commerce or in the production of goods for commerce is as rewarding as an attempt to square the circle. The judicial task in marking out the extent to which Congress has exercised its constitutional power over commerce is not that of devising an abstract formula. * * * What was said about a related problem is not inapposite here: Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas." In *Metcalf v. Belo*, — U. S. —, 1942, where the question was the validity of a contract fixing the regular rate of pay, the court said: "The problem presented by this case is difficult, difficult because we are asked to provide a rigid definition of regular rate when Congress has failed to provide one."

838 Presumably Congress refrained from attempting such a definition because the employment relationships to which the Act would apply were so various and unpredictable. That which it was unwise for Congress to do, this court should not do. Discarding then the Board's formula on which its decision rests and considering the case from the standpoint of the effect of the evidence to establish that at the time of the complaint and hearing, the Association was dominated or fostered by the company, and there was therefore not a free choice of the employees, we think it plain that the inference the Board drew is without support in the evidence, its concluding finding may not stand. Further if we could agree with the Board that something yet was lacking, to purge the Association of company support, and that the acts of the supervisory employees at Shreveport, though they were completely ineffective and were stopped when brought to the

men organized, and it took a hand in effectively organizing the local Association and beating the union drive. Under those flagrant circumstances of interference and coercion, we said: "The statute recognizes two parties to a labor bargaining compact. It requires that the employees in bargaining be completely independent of the employer so that in the bargaining, labor will be represented by persons or organizations having only its interest in mind, and acting wholly uninfluenced by fear or favor, for or from the management. Therefore, when once it appears that management has had a hand in organizing, supporting or in anywise interfering or collaborating with an Association of employees, such an association may not be recognized as the free and voluntary association of employees called for in the act. If in such cases the employees really intend and want it to be such, their only sure course is to disestablish it as the bargaining agency and, entirely dissolving it, begin organization anew, upon their own time and their own devices without aid or comfort from the management."

company's knowledge, constituted attempts at interference chargeable to the company, we should still decline to enforce the order as one not effectuating but tending to defeat the policies of the Act and therefore an abuse of discretion. As these are expressed in the preamble, Sec. 151 and in Sec. 157, 29 U. S. C. A., they are (1) "the friendly adjustment of industrial disputes", and (2) "the protection of employees in their rights of self-organization and representation." They are not the promotion of one union over another.¹⁰ Here, the evidence showing that an overwhelming number of the employees had organized and chosen the Association as representative, instead of ordering the company to cease and desist from the interferences found or at most making the order applicable alone to the Shreveport office, the Board's order
 539 required the disestablishment of this Association as representative of the employees, not only Shreveport, the only place where any employee had shown a desire for any other representation but at all the offices and establishments where there was none. The sole effect of the enforcement of such an order at this time and under the circumstances now confronting this country, would be to throw the company and the employees generally into a state of turmoil and confusion incident to a general organizational campaign. For the court upon this evidence at this time and under these circumstances, to decree its enforcement would be completely contrary to the policy of the Labor Relations Act as well as to public policy generally.

The order of the Board is vacated and set aside. The Petition for Enforcement is denied.

840 In United States Circuit Court of Appeals

No. 100076

SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

versus

NATIONAL LABOR RELATIONS BOARD

Judgment

June 30, 1942

This cause came on to be heard on the petition of Southern Association of Bell Telephone Employees for review of an order of the National Labor Relations Board entered on September 23,

¹⁰In *N. L. R. B. v. Brown Paper Mills Company*, 108 F. (2d) 872, we said, "Respondent makes a good deal of the fact that one of the Brotherhood leaders admits that it brought the charges for the purpose of helping its organizational campaign. The point that the Brotherhood may benefit or lose by this proceeding is not material to it. The law is not concerned with what organization employees may form or join. It is concerned only with seeing that that joining is free from company interference, influence or support."

1941. In the Matter of: Southern Bell Telephone & Telegraph Company and International Brotherhood of Electrical Workers, affiliated with A. F. of L., Case No. C-1911, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the order of the said National Labor Relations Board in this cause be, and the same is hereby, vacated and set aside, and the petition for enforcement is denied.

841

In United States Circuit Court of Appeals

No. 10078

SOUTHERN BELL TELEPHONE & TELEGRAPH COMPANY
versus

NATIONAL LABOR RELATIONS BOARD

Judgment

June 30, 1942

This cause came on to be heard on the petition of Southern Bell Telephone and Telegraph Company for a review of an order of the National Labor Relations Board entered on September 23, 1941, In the Matter of, Southern Bell Telephone and Telegraph Company and International Brotherhood of Electrical Workers affiliated with A. F. of L., Case No. C-1911, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the order of the said National Labor Relations Board in this cause be, and the same is hereby, vacated and set aside, and the petition for enforcement is denied.

842 [Clerk's certificate to foregoing transcript omitted in printing.]

843

In Supreme Court of the United States

Nos. 460-461

Order extending time within which to apply for writs of certiorari

On consideration of the motion of counsel for the petitioner in the above-entitled causes, and good cause therefor having

been shown, it is now hereby ordered that the time within which a petition for writs of certiorari may be filed herein be and the same is hereby extended for a period of fifteen days from September 30, 1942.

Dated this 23 day of Sept., 1942.

HUGO L. BLACK,

*Associate Justice of the Supreme
Court of the United States.*

846

Supreme Court of the United States

No. 460—October Term, 1942

Order allowing certiorari

Filed November 16, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

847

Supreme Court of the United States

No. 461—October Term, 1942

Order allowing certiorari

Filed November 16, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

848

In the Supreme Court of the United States

Stipulation as to record

Filed Dec. 29, 1942

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that the printed record herein shall consist of the following:

I. Items 1, 2, 3, 4, 5, 6, 7, 8, 11, 13, 17, and 21, inclusive, listed in the Certificate of the National Labor Relations Board, consisting of the following: Amended Charge, Complaint and Notice of Hearing, Answer of Southern Bell Telephone and Telegraph Company, Amended Complaint and Notice of Hearing, Motion of Southern Association of Bell Telephone Employees for Leave to Intervene, Answer of Southern Bell Telephone and Telegraph Company to Amended Complaint, Answer of Southern Association of Bell Telephone Employees to Amended Complaint, Amendment to Answer of Southern Association of Bell Telephone Employees, Intermediate Report of Trial Examiner, Exceptions of Southern Bell Telephone and Telegraph Company to Intermediate Report, Exceptions of Southern Association of Bell Telephone Employees to Intermediate Report, and Decision, setting forth findings of fact, conclusions of law, and order, of the National Labor Relations Board.

840 II. The following portions of the transcript of testimony:

850 III. The following exhibits or excerpts from exhibits:
Board Exhibit 2.

Excerpt from Board Exhibit 4, printed on page 62 of Appendix to Board's brief in court below.

Board Exhibits 5, 6, 7, 8, 9, 10, 11, 12, 13, 14a, and 14b, inclusive, and Board Exhibit 36.

Excerpts from Board Exhibits 15, 16, and 19, printed on pages 75 to 77 of Appendix to Board's brief in court below.

Board Exhibits 22 and 23.

851 — Excerpts from Board Exhibits 27, 28, 29, 30, 31, 32, and 33 printed on pages 80 to 86 of Appendix to Board's brief in court below.

Following excerpts from Board Exhibit 37: salutation, date, first paragraph, and ending.

Respondent (company) Exhibits 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, inclusive.

Association Exhibit 7.

IV. The proceedings had before the Circuit Court of Appeals for the Fifth Circuit.

V. While not stipulated to be printed, the parties may refer to the following portions of the record:

1. The published pamphlets of the annual proceedings of the General Assembly of the Association.

2. The minutes of collective bargaining meetings.

These documents are all in convenient form for easy reference but are very voluminous and would involve a great amount of

printing, hence this stipulation is made with respect to them in this form.

Dated at Washington, D. C., this 29 day of December 1942.

CHARLES FAHY,

Solicitor General of the United States.

Dated at Atlanta, Georgia, this 24th day of December 1942.

MARION SMITH,

S. B. NOFF,

JOHN A. BOYKIN, Jr.,

*Attorneys for Southern Bell Telephone
and Telegraph Company.*

Dated at Atlanta, Georgia, this 24th day of December 1942.

JAMES A. BRANCH,

FRANK A. HOOPER, Jr.,

*Attorneys for Southern Association of
Bell Telephone Employers.*

[Endorsement on cover:] File Nos. 46961, 46962. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 460. National Labor Relations Board, Petitioner, vs. Southern Bell Telephone and Telegraph Company. Term No. 461. National Labor Relations Board, Petitioner, vs. Southern Association of Bell Telephone Employees. Petition for writs of certiorari and exhibit thereto. Filed October 15, 1942. Term No. 460 O. T. 1942, 461 O. T. 1942.

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OCTOBER TERM, 1942

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

**SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY**

NATIONAL LABOR RELATIONS BOARD, PETITIONER

2.

**SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES.**

PETITION FOR WRITS OF CERTIORARI TO THE UNITED
 STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH
 CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1942

Nos. _____

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that writs of certiorari issue to review the judgments of the United States Circuit Court of Appeals for the Fifth Circuit entered on July 30, 1942, setting aside and refusing to enforce an order issued by the Board against the Southern Bell Telephone and Telegraph Company (R. 210-211).¹

¹ The judgments were entered in two separate proceedings under Section 10 (f) of the National Labor Relations Act

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 202-210) is reported in 129 F. (2d) 410. The findings of fact, conclusions of law, and order of the Board (R. 164-196) are reported in 35 N. L. R. B. 621.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on June 30, 1942 (R. 210-211). An order extending the time within which to file a petition for writs of certiorari for fifteen days from September 30, 1942, was signed by a Justice of this Court on September 23, 1942 (R. 213). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

for review of the Board's order, instituted respectively by Southern Bell Telephone and Telegraph Company (R. 10-20) and by Southern Association of Bell Telephone Employees (R. 1-4), a labor organization found by the Board to be company-dominated. In its answer to the petition of the Company, the Board requested enforcement of its order (R. 22-26). Pursuant to stipulation of the parties (R. 212-213), the printed record for purposes of the petition for certiorari consists of the volume entitled "Transcript of Record" which also contains the proceedings in the court below, referred to herein as "R"; and the appendices to the Board's brief and the Company's brief in the court below, respectively referred to herein as "B. A." and "C. A." References to unprinted portions of the stenographic transcript of testimony and the Board's exhibits will be referred to as "Tr." and "Bd. Exh.", respectively.

QUESTIONS PRESENTED

1. Whether there is substantial evidence to support the finding of the Board that the Southern Bell Telephone and Telegraph Company dominated, interfered with, and supported a labor organization of its employees. A subsidiary question encompassed in this inquiry is whether the Board might treat as evidence of company domination and support of the labor organization the fact that it is a continuation of an admittedly company-dominated union which was never disestablished.

2. Whether, upon the Board's findings of domination, interference, and support, it might properly require the Company to withdraw all recognition from and completely disestablish the organization as a collective bargaining representative of its employees.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix.

STATEMENT

Upon the usual proceedings the Board issued its findings of fact, conclusions of law, and order (R. 164-196). The pertinent facts, as found by the Board and as shown by the evidence, may be summarized as follows:²

² In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

Southern Association of Bell Telephone Employees (hereinafter called the Association) was established in 1919 under the sponsorship of Southern Bell Telephone and Telegraph Company (hereinafter called the Company) (R. 170, 187; R. 60, 65). Until passage of the Act on July 5, 1935, it was entirely maintained by the Company's financial support and assistance (R. 170, 187-188; R. 60, 65, B. A. 4, 7-8, 9-10).³ The Association operated through locals established in the Company's offices in the nine Southern States through which the Company's operations extend (R. 169, 170; R. 46, 59, 64, B. A. 15, 25-26, 66).

In April and May 1935, in anticipation of passage of the Act, officers of the Association conducted a company-wide canvass of the employees, the announced purpose of which was to secure funds with which the Association or a like successor could operate after the Act went into effect (R. 170-171; B. A. 3-5, 14-15, 38-40, 63-66). The Company openly approved and supported the canvass by granting Association solicitors leaves of absence with pay, paying their travelling expenses, and making available to them Company automobiles, premises, time, and other facilities; at least one supervisor directly participated in the solicitation (R. 171, 178-179; R. 61, B. A. 4-5, 15-16, 29-30, 31-32, 38-40). The campaign re-

³ Company counsel admitted at the hearing that up to the date of the Act, the Company "occupied a relation" to the Association that is "prohibited by the Wagner Act" (Tr. 440).

sulted in a fund of approximately \$5,000, part of which was received by the Association after the Act was in effect (R. 171, 178; B. A. 8, 63, 67).

A few weeks after the passage of the Act, the Company, through its supervisors, orally advised the employees of their rights under the Act and of the Company's intention to pursue a "hands-off" policy (R. 172; B. A. 10-11, 27-28, 43-45, C. A. 47-51, 55). About the same time, however, the Company distributed to the employees a written notice entitled "Memorandum—Wagner Bill Interpretations," which explained that while the Company was required by law henceforward to withdraw certain items of financial support and assistance of the Association, it would continue to furnish the Association certain other direct and indirect financial aid (R. 172-174; B. A. 45-46, 70, C. A. 49-50).⁴ The Board found that this notice "announced an assumption on the part of the [Company] that the Association would continue to exist and function" (R. 178). The Board further found that the partial withdrawal of financial support and the oral remarks of the supervisors did not restore freedom of choice to the employees, when these were considered with the concurrent written notice, the failure to withdraw recognition of the Association, and the failure to disavow the recent assistance to the Association in collecting funds with which to perpetuate itself (R. 178-179).

⁴ The Company furnished this aid to the Association until 1937 (*infra*, p. 8).

In August 1935, officials of the Association, utilizing the above-mentioned funds, reorganized the Association under the same name and with largely the same leadership as before, but under a revised constitution (R. 174-177; B. A. 8-9, 13-14, 16-17, 25-26, 63-69, 73-74, 75).⁶ Everything which was said and done in connection with the reorganization deliberately emphasized to the employees the continuity between the old and the revised Association. Thus, the revised constitution recited, *inter alia*, that the Association had been formed in 1919, that it had been in "continuous operation" since that time, and that the document constituted a "revision * * * superseding" previous revisions of the constitution; the last of which became effective in May 1934 (R. 175-177, 180; B. A. 75). Similarly, the employees were repeatedly reminded by the Association officials, while adherence to the organization in its revised form was being solicited; that the officials were engaged merely in revising the old Association, and they were told that membership applications which they were asked to sign were intended to evidence their desire "to continue" their membership in the Association and

⁶ After he had taken a leading role in initiating the reorganization, Askew, the president, resigned and was succeeded by the vice president; Askew continued, however, as a member of the Association until 1939 when he resigned because he was considered by the employees to be a supervisory employee (R. 171 fn., 174; B. A. 3, 9, 13-14, 17).

were not to be regarded as "new" applications for membership (R. 175-177; B. A. 25-26, 73-74).^{*}

The Company supported the Association during the reorganization period by executing a collective-bargaining agreement with it and granting it gratuitous check-off privileges before the revised constitution had been ratified by the employees and while their continued adherence to the Association was being solicited (R. 175-177, 188-189; B. A. 21, 40-42, 48-50, 52-53, 58, 71-72, 73-74).

On February 1, 1936, the revised constitution went into effect, after having been ratified by the requisite number of Locals of the Association (R. 177; B. A. 21, 75). The officers of the Association continued in office and the Association's funds (the sum of \$5,000 recently collected) continued in the same bank and under the same name as before (R. 177, 180; B. A. 13-14, 17, 26-27, 59).[†]

^{*} Subsequently, in 1940, after the Association had retained counsel, the recital of the constitution was changed so as to read that the Association was formed in "1935 * * * supplanting a former organization of employees by the same name" (R. 184-185; B. A. 86). Similarly, the minutes of the 1940 annual meeting refer to it as the "5th Annual Meeting," whereas the minutes of the annual meetings between 1936 and 1939 refer to the meetings as the "17th" to "20th Annual Meeting[s]" (R. 180, 185; B. A. 76, 77, 80, 81, 82).

[†] Prior to the reorganization, there being no office of treasurer, the Association secretary, Wilkes, deposited the money as acting treasurer; she continued in office after the reorganization as general secretary-treasurer and the new title was substituted in the account (R. 171, 177; B. A. 8, 26-27, 59).

Until 1937, the Company, following the course set forth in the memorandum distributed in 1935, continued to permit the Association free use of Company facilities and property for Association meetings and other business, and allowed Association representatives to meet together for some purposes during working hours without loss of pay (R. 177-178; Tr. 74-75, 180-181, 185, 187, 189, 346). In January 1937 and April 1937, the Company issued and distributed to the employees revised memoranda containing further "interpretations" of the Act, and pursuant thereto withdrew all remaining forms of financial support and assistance of the Association (R. 180-184, 189; C. A. 9-13, B. A. 46, Tr. 181-185, 189-195).

Late in 1940, the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor (hereinafter called the Union), began to organize the Company's employees at its Shreveport, Louisiana, office and established a local there (R. 191; B. A. 36-38). The long distance supervisor in that office, acting upon the suggestion of the District Traffic Manager that she "influence" her "people" against the Union (R. 191; B. A. 34-35), told two employees that they did not "need" the Union, that the Association was "everything that they had or could get," and that they could not "get any better than * * * they did out of the Association" (R. 191; B. A. 35). The General Traffic

Manager reprimanded the District Traffic Manager for this, but there is no showing that the reprimand was made known to the general body of employees (R. 191; C. A. 79). Some months later, the Employment Supervisor in the same office, referring to an employee who had joined the Union, declared that it was a "shame" the Company could not discharge its "dissatisfied" employees (R. 191-192; B. A. 30, 32-33).

On December 17, 1940, the Union filed a charge with the Board, and on January 15, 1941, an amended charge, which initiated these proceedings (R. 165; R. 27, 83). On February 10, 1941, the Association, having been informed that the Board was about to issue a complaint alleging that the Association was company-dominated in violation of the Act, wrote Company President Warren, referring to the imminent Board action and stating that "because such a charge clouds this Association's right to represent the employees of the Company * * * the Association will not undertake to act as their collective bargaining agent pending a canvass of its membership by signed ballot" (R. 185-186; B. A. 88-89). On February 11, 1941, Warren replied, "It is noted that, pending a canvass of your members, you will not undertake to represent the employees of this Company as their collective bargaining agent" (R. 186, 187; B. A. 90).

The Association thereupon conducted a signed poll of its members to determine whether they de-

sired to "continue" their Association membership and whether they wished the Association to represent them (R. 186, 189; R. 68-69, 70-75). Meanwhile, the Company posted notices on its bulletin boards setting forth the employees' rights under the Act and asserting the Company's neutrality with respect to union organization, and it issued corresponding instructions to its supervisory staff (R. 186, 189; R. 41-43, B. A. 47, 91-92, C. A. 72-73). A large majority of the employees voted "yes" to each question propounded on the signed ballot (R. 186, 189-190; R. 77-79). Thereupon, on March 6, 1941, the Company recognized the Association as the "authorized collective bargaining agent" and resumed bargaining relations with it pursuant to the existing exclusive bargaining contract dated July 30, 1940, which was not regarded as having been cancelled by the above-mentioned exchange of letters on February 10 and 11, 1941 (R. 187, 185; B. A. 51, 48, 87, 96).

Upon the foregoing facts, the Board found that "the Association, which originated in 1919, continued after the effective date of the Act, substantially unchanged, and not only without any 'line of fracture,'^{*} but without so much as a change in name" (R. 188). The Board found, further, that in the absence of an "explicit announcement" to the employees that the Company "would no longer

^{*} Citing *Westinghouse Electric & Mfg. Co. v. National Labor Relations Board*, 112 F. (2d) 657, 659 (C. C. A. 2), affirmed 312 U. S. 660.

recognize or deal with the Association," the effect of the Company's prior domination and support of the Association had not been dissipated and the employees had not been "afforded the opportunity to start afresh in organizing * * * which they must have if the policies of the Act are to be effectuated"; it found accordingly that the employees' choice of the Association did not reflect a free choice (R. 189-190).

The Board concluded that the Company had dominated, interfered with, and supported the Association in violation of Section 8 (2) of the Act, and had engaged in interference, restraint, and coercion in violation of Section 8 (1) (R. 190-191, 192). The Board's order directed the Company to cease and desist from its unfair labor practices and, as affirmative action which the Board found would effectuate the policies of the Act, to withdraw recognition from and completely disestablish the Association as collective bargaining representative of its employees and to post notices of compliance throughout all the Company's offices (R. 193, 195-196).

Thereafter, the Company and the Association filed separate petitions in the court below to review and set aside the Board's order (R. 1-4, 10-20). The Board answered, requesting enforcement of its order against the Company (R. 6-8, 22-26). On June 30, 1942, the court handed down its opinion and entered its judgments setting aside the Board's order in its entirety (R. 202-211).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In not holding that the following findings of the Board were supported by substantial evidence and were therefore conclusive under Section 10 (e) and (f) of the Act:

(a) That the Company dominated, interfered with, and supported the Association, in violation of Section 8 (2) of the Act;

(b) That thereby and in other ways the Company engaged in interference, restraint, and coercion in violation of Section 8 (1) of the Act.

2. In holding that the Board could not find that a labor organization, which was a revision of an admittedly company-dominated union which was never disestablished, was unlawfully dominated and supported.

3. In setting aside and denying enforcement to the Board's order.

REASONS FOR GRANTING THE WRIT

1. The court below correctly stated the Board's position to be (R. 207-208)—

that the Association was and remained tainted and could not represent the employees because there had been no sufficiently clean break away from the old, to establish a new Association, by a complete dissolution and abandonment of the old and a fresh start from scratch.

The court held, however, that "the statute prescribes no such formula" (R. 208), and that the case should be considered (R. 209)—

from the standpoint of the effect of the evidence to establish that at the time of the complaint and hearing, the Association was dominated or fostered by the company, and there was therefore not a free choice of the employees. * * *

The court further held that even if the Association had not been purged of company support the Board's order would still be an abuse of discretion because a majority of the employees had chosen the Association as representative.

The test applied by the Board but rejected by the court below has been repeatedly approved by this Court. *National Labor Relations Board v. Pennsylvania Greyhound Lines*, 303 U. S. 261; *National Labor Relations Board v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241; *National Labor Relations Board v. Falk Corp.*, 308 U. S. 453; *H. J. Heinz Co. v. National Labor Relations Board*, 311 U. S. 514; *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584; *Westinghouse Electric & Manufacturing Co. v. National Labor Relations Board*, 312 U. S. 660, affirming 112 F. (2d) 657 (C. C. A. 2). * In the present case an association which originally was company dominated and supported has continued * as the repre-

* Respondent denies that the present Association is a continuance of the original unlawful organization, and the court below stated that it was clear under the proof that "the old

sentative of the employees. As in the *Newport News* case (308 U. S., at 248-250), by the time of the Court's decision there was no longer active support and interference by the company with the employees' rights under the Act. In that case the Court held that even though all management control had terminated, "the effects of the long practice cannot be eliminated and the employees rendered entirely free to act upon their own initiative without the complete disestablishment of the plan" (p. 250). The Board applied this principle here.

In this case the Company advised its employees of their rights under the Act and stated that it did not care what union they joined (*supra*, pp. 5-10). But throughout the entire period the Association was recognized as bargaining representative, and the Company never notified the workers that it was withdrawing recognition from or discontinuing the Association.¹² That such a definite repudiation is necessary in order to dissipate the effect of an employer's prior and long continued support is

Association has been completely superseded by the present one, formed under a new constitution" (R. 207). The evidence summarized in the statement shows exactly the contrary, and provides ample support for the Board's finding. Instead of supersedure there was merely a revision of the constitution of the old association, with not even the name being changed. And the Association's officers were careful to advise the employees that the "new" association was merely a continuance of the old. See pp. 6-7, *supra*.

¹² The statement by the Company in 1941 that it "noted" that the Association would not "undertake" to act as collective bargaining agent "pending a canvass" of its members (*supra*, pp. 9-10) obviously did not constitute withdrawal

clear under the cases cited above." The *Westinghouse* case, in particular, is closely in point. There the employer had announced in a speech to the old elected representatives that the original plan was to be discontinued, but failed to make any such disclosure to the employees as a whole. The absence of any such public repudiation of the plan was deemed controlling by the Circuit Court of Appeals. Its opinion states (112 F. (2d), at 660):

* * * the company did not make any effort to make it plain to the employees generally that the "Independent" was not a revision, or amendment, of the "Plan". On the surface it seemed to be such, for it emanated from the old elected representatives, and that alone established an appearance of continuity between the two. * * *

The refusal of the court below to apply these principles conflicts with the above decisions. In addition, the criterion which the court did apply is plainly insupportable. For it would require the Board to find active domination and interfer-

of recognition or repudiation of the Association by the Company. Although the Association did not bargain collectively during the 24-day period, the pre-existing contract remained in force (*supra*, p. 10), and the letters exchanged between the Association and the Company indicated on their face that relations would be resumed upon completion of the poll. Despite respondent's contention to the contrary, it is plain there was no definite or permanent severance of relationship at this, or any other, point.

¹¹ In *E. I. du Pont de Nemours & Co. v. National Labor Relations Board*, 116 F. (2d) 388 (C. C. A. 4), certiorari denied, 313 U. S. 571; *A. E. Staley Manufacturing Co. v.*

ence exerted at the time of the complaint and hearing before entering a disestablishment order.¹² The test adopted by the court below would deprive the Board of its recognized power to infer that continuance as the bargaining representative of an organization once supported or dominated by the employer gives that organization "a marked advantage over any other" (*National Labor Relations Board v. Pennsylvania Greyhound Lines, supra*, at 267), and that its disestablishment as bargaining representative is essential if the complete freedom of the employees to choose their representative is to be restored.

2. The holding of the court below that the unlawful conduct of the employer must be continuing at the time of the complaint and hearing is also directly contrary to the language of the statute which empowers the Board to enter an order to cease and desist and to take affirmative action if it finds that the employer "has engaged in or is engaging in" an unfair labor practice (Section 10 (c)). *Federal Trade Commission v. Goodyear Tire & Rubber Co.*, 304 U. S. 257, involving identical language in the Federal Trade Commis-

National Labor Relations Board, 117 F. (2d) 868 (C. C. A. 7); *Humble Oil & Refining Co. v. National Labor Relations Board*, 113 F. (2d) 85 (C. C. A. 5), and *Magnolia Petroleum Co. v. National Labor Relations Board*, 112 F. (2d) 545 (C. C. A. 5), relied on by respondent, there was a definite and public repudiation of the unlawful association as a bargaining agency.

¹² The *Newport News* and *Westinghouse* cases are in conflict with the decision below on this point also. Further-

sion Act, is directly in point and in conflict with the decision below.¹³

CONCLUSION

For the reasons stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

ROBERT B. WATTS,
General Counsel,
National Labor Relations Board.

OCTOBER 1942.

more, in those cases the fact that the inside union at all times had a majority of employees as members was deemed immaterial. Yet, in the instant case, the court held that choice of the Association by a majority of the employees precluded disestablishment. Compare *National Labor Relations Board v. Falk Corp.*, 308 U. S. 458; *National Labor Relations Board v. Automotive Maintenance Machinery Co.*, 315 U. S. 282.

¹³ The same erroneous theory was given effect by the court below in *National Labor Relations Board v. Goodyear Tire & Rubber Co.*, 129 F. (2d) 661, in which it is anticipated that a petition for certiorari will be filed.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Title 29, Sec. 151, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization; to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

* * * * *

SEC. 10.

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair

labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.

(f) * * * the findings of the Board as to the facts, if supported by evidence, shall * * * be conclusive.

Nos. 460, 461

In the Supreme Court of the United States

OCTOBER TERM, 1942

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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No. 460

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No. 461

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**ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 336-343) is reported in 129 F. (2d) 410. The findings of fact, conclusions of law, and order of the Board (R. 99-121) are reported in 35 N. L. R. B. 621.

JURISDICTION

The petition for writs of certiorari was granted on November 16, 1942 (R. 345). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) and (f) of the National Labor Relations Act (hereinafter called the Act).

QUESTIONS PRESENTED

1. Whether there is substantial evidence to support the findings of the Board that the Southern Bell Telephone and Telegraph Company dominated, interfered with, and supported a labor organization of its employees.
2. If question 1 be answered in the affirmative, whether the Board properly required the Company to withdraw recognition from and disestablish such labor organization.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix.

STATEMENT

Upon the usual proceedings pursuant to Section 10 of the Act, the Board issued its findings of fact, conclusions of law, and order (R. 99-121). The Board's findings and the supporting evidence are set out fully in the Argument, *infra*, pp. 10-28. In brief outline, the findings may be summarized as follows:

From 1919 until 1935 the Southern Bell Telephone and Telegraph Company, hereinafter called the Company, maintained throughout the nine Southern States in which the Company operates, a concededly employer-dominated and supported labor organization known as the Southern Association of Bell Telephone Employees, hereinafter called the Association (R. 102, 103, 114-115). In April and May 1935, when passage of the Act seemed imminent, the Association, in a canvass of all the Company's employees, conducted on Company time and property and at Company expense, raised about \$5,000 to enable it to continue after enactment of the Act (R. 103-104, 108-109). After the Act became effective, the Company issued a bulletin to its employees stating that the Company would continue, as it had before, but with certain minor exceptions, to pay the salaries of Association officials and furnish to the Association facilities, and would continue to deal with the Association (R. 105, 108-109). The leaders of the Association, Askew, its president, Weil, its vice president, and Mrs. Wilkes, its secretary, held positions with the Company which identified them in the eyes of the employees as management representatives and rendered the Company responsible for their activities in the Association (R. 104, 106). Although in the months following the adoption of the Act these officers effected minor revisions in the constitution of the Association, it continued thereafter with the same name and substantially the

same leadership (R. 105-110, 115). The Company executed a collective bargaining contract with the Association and granted it a check-off of dues before the revised constitution had been ratified by the employees and before any of the employees had signed cards for membership in the revised Association (R. 105-107, 115). Until 1937, also, the Company gave the Association direct financial assistance by granting it free use of Company property and facilities, and permitting Association representatives to meet for some purposes during working hours without loss of pay (R. 108). In 1937 these forms of support were withdrawn (R. 110-112, 115). However, for several years thereafter, Weil and Mrs. Wilkes, for whose acts in the Association the Company is responsible, continued as leaders of the Association; Weil was president from 1935 until 1939, and vice president in 1940, Mrs. Wilkes was secretary-treasurer from 1935 until 1938 and vice president-treasurer from 1938 until 1939 (R. 104, 106, 109-110, 115).

Late in 1940, the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor (hereinafter called the Union), began to seek members among the Company's employees at its Shreveport, Louisiana, office (R. 117). Thereafter a supervisor in that office disparaged the Union to two employees and advocated the Association, and another supervisor

asserted it was a "shame" the Company could not discharge its "dissatisfied" employees, referring to Union adherents (R. 117-118).

In February 1941, after the Union had filed charges with the Board initiating these proceedings, the Association arranged for a signed poll of its members to determine whether they desired to "continue" their Association membership and whether they wished the Association to represent them (R. 100, 113-114, 116). Pending the canvass, the Association advised the Company that it would not act as bargaining agent, and the Company "noted" the Association's advice in that regard and posted notices of the employees' rights under the Act and its own neutrality (R. 113-114, 115-116). A large majority of the employees voted "yes" to the questions propounded on the signed ballot (R. 114, 116), whereupon the Company recognized the Association as the "authorized collective bargaining agent" and resumed bargaining relations with it pursuant to a current exclusive bargaining contract which had never been considered to have lapsed (R. 114, 113).

The Board found that the Association, which originated under company sponsorship in 1919, continued after the Act, substantially unchanged, and without any "line of fracture" (R. 115). It further found that the Company, by recognizing and dealing with the Association, after the effective date of the Act, perpetuated its sponsor-

ship, domination, and support of the Association, thereby denying its employees their right to organize for collective bargaining free from interference or restraint by their employer (R. 108-109, 114, 115-116). The Board, therefore, found that the employees' selection of the Association did not reflect their free choice (R. 115-116). It concluded that after the effective date of the Act the Company had dominated, interfered with, and supported the Association in violation of Section 8 (2) of the Act, and had engaged in interference, restraint, and coercion, in violation of Section 8 (1) (R. 116-118). The Board also found that complete disestablishment of the Association was necessary to restore freedom of choice to the employees (R. 115-116, 118); accordingly, in addition to the usual cease and desist and posting of notices requirements, it ordered the Company to withdraw recognition from and completely disestablish the Association as collective bargaining representative of its employees (R. 119-120).

Thereafter, the Company and the Association filed separate petitions in the court below to review and set aside the Board's order (R. 1-2, 6-13). The Board answered, requesting enforcement of its order against the Company (R. 4-5, 14-17). On June 30, 1942, the court handed down its opinion and entered its judgments setting aside the Board's order in its entirety (R. 336-344). The Board filed a petition for writs of certiorari

on October 15, 1942,¹ and on November 16, 1942, the petition was granted (R. 345).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In not holding that the following findings of the Board were supported by substantial evidence and were therefore conclusive under Section 10 (e) and (f) of the Act:

(a) That the Company dominated, interfered with, and supported the Association, in violation of Section 8 (2) of the Act;

(b) That thereby and in other ways the Company engaged in interference, restraint, and coercion in violation of Section 8 (1) of the Act.

2. In holding that the Board could not find that an employer who after the effective date of the Act recognized and dealt with a labor organization, which was a mere revision of a union admittedly company-dominated prior to the Act, had thereby unlawfully dominated and supported such labor organization.

3. In setting aside and denying enforcement to the Board's order.

SUMMARY OF ARGUMENT

The Board's findings that the Company dominated and interfered with the administration of the Association and contributed financial and other

¹ An order extending the time within which to file the petition for 15 days from September 30, 1942, was signed by a Justice of this Court on September 23, 1942 (R. 344-345).

support to it in violation of Section 8 (1) and (2) of the Act are supported by substantial evidence. The Association was unquestionably company sponsored, dominated and supported prior to July 1935, when the Act was passed. After that time the Company continued to contribute support in violation of the Act, and at the same time signed a contract manifesting its recognition of the Association. Recognition after the effective date of the Act of a labor organization formed under Company sponsorship and maintained for 16 years entirely by Company financing was an act by which the Company imposed upon its employees a labor organization neither freely formed, administered nor chosen by them. Thus, after the Act went into effect, the Company perpetuated its prior domination of the Association, thereby violating Section 8 (2).

The revision of the constitution of the Association after this contract had been signed did not establish a new organization. Under the revised charter, the Association had the same name, the same structure, and the same officers, and there did not purport to be any break in the organizational continuity. Nor did the employees regard it as a new organization. On the contrary, both the Company and the Association repeatedly emphasized that the Association was continuing, with merely a change in its method of financing.

Between 1935 and 1937 the Company continued

to give the Association financial and other support, though not as extensively as before. After 1937 and until 1939 the president and secretary-treasurer of the Association continued to be persons whose positions with the Company, as well as their long leadership prior to the Act in a company-sponsored labor organization, marked them in the eyes of the employees as management representatives.

In these circumstances the Board well concluded that the effect of the Company's long history of domination and support of the Association would not be dissipated except by an explicit announcement to the employees that the Company would no longer recognize or deal with that organization. The Board was not required to find that mere general declarations of an intention to comply with the law or a temporary suspension of bargaining while the Association conducted a signed canvass of its members rid the Association of the effects of the prior company support.

The court below erred in holding that full freedom of choice may be restored to employees while an organization established and supported by the employer continues to be recognized as the representative. Such an organization will always enjoy the advantages which the employer's support and interference gave it. Many decisions, including those relied on by respondents, hold that the Board may require the employer definitely to re-

puddate such an organization in order to wipe the slate clean of the effect of his prior conduct.

The holding of the court below that the validity of the Board's findings and order turned upon whether there was evidence of domination of the Association "at the time of the complaint and hearing" is directly in conflict with the express language of the Act as well as with many decisions of this Court.

ARGUMENT

THE FINDINGS OF THE BOARD CONCERNING THE COMPANY'S UNFAIR LABOR PRACTICES ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, AND THE DISESTABLISHMENT ORDER IS PROPER.

The Board found that the Company had dominated and interfered with the administration of the Association, had contributed financial and other support to it, and had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (1) and (2) of the Act (R. 116, 118). Upon these findings, the Board ordered the Company to cease and desist from its unfair labor practices, and, as affirmative action which the Board found necessary to reestablish freedom of choice among the Company's employees (R. 118), to withdraw recognition from and completely disestablish the Association as a collective bargaining representative (R. 119-120).

The only issues before the court below were whether the Board's findings with respect to the unfair labor practices were supported by substantial evidence, and whether the Board's order was proper. The court below did not indicate its disagreement with any of the Board's underlying findings but, nevertheless, held that the ultimate findings of violations of the Act were "without support in the evidence" (R. 338, 340). And it further held that, in any event, the order of disestablishment, in the circumstances of this case, was an abuse of the Board's discretion (R. 342-343). Accordingly, it set aside the Board's order in its entirety (R. 343).

We shall show that the Board's findings of fact are supported by substantial evidence (pp. 11-28), and that on these facts, the Board's conclusion of domination and interference, in violation of Section 8 (1) and (2) of the Act, and the order of disestablishment, are proper under principles repeatedly approved by this Court (pp. 28-40). Accordingly, we submit, the court below erred in failing to give the Board's findings finality and in declining to enforce its order.

A. THE BOARD'S FINDINGS OF FACT ARE SUPPORTED BY SUBSTANTIAL EVIDENCE—

The evidence, as the court below noted (R. 338 note), is "free from substantial conflict," the "disagreement" between the parties being "not over what the record establishes as done and said, but over the Board's conclusions as to the effect under

the Act of what was done and said."² We shall first briefly review the underlying findings and the evidence upon which these findings are firmly grounded.³

Organization and administration of the Association prior to the Act.—The Association was established in 1919 under the sponsorship of the Company as an advisory agency for adjusting differences with employees within management limitations (R. 103, 114-115; 38, 40).⁴ The Association operated through locals in the Company's offices in the nine Southern States through

² Respondent Company has stated that with two exceptions the evidence is free from dispute (Opp. to Pet. p. 2).

³ In the following statement references preceding the semicolon are to the Board's findings and succeeding references are to the supporting evidence.

⁴ During 1919 there were labor disturbances and strikes of employees of the Company in several cities and the Association was organized as a result thereof (R. 122-123). In thus meeting the threat of outside unionism by sponsoring the Association, the Company was following a pattern of anti-unionism prevalent at that time. Economic studies show that in 1918-1919 employers throughout the country sponsored company unions to avoid having their employees join *bona fide* outside unions. Daugherty, *Labor Problems in American Industry* (Rev. Ed. 1938), p. 640. The National Labor Relations Board has considered several such labor organizations established in 1919, and its findings that an employer by continuing after the effective date of the Act to deal with them perpetuated an obstacle to free organization by its employees have been upheld by the courts. *Western Union Telegraph Co. v. National Labor Relations Board*, 113 F. (2d) 992 (C. C. A. 2), enforcing 17 N. L. R. B. 34; *Bethlehem Steel Co. v. National Labor Relations Board*, 120 F. (2d) 641 (App. D. C.), enforcing 14 N. L. R. B. 539.

which the Company's operations extend (R. 102, 107; 29, 135, 142, Bd. Exh. 4, Art. III, Sec. 1). Applications for membership were not uniformly required of employees (R. 103; 132, 161). No over-all membership list was maintained (R. 103; 139, 145, 156). Until passage of the Act on July 5, 1935, the Association was entirely maintained by the Company's financial support and assistance: it had no funds of its own, all of its expenses, including salaries and necessary disbursements of employees engaged in Association business, were borne by the Company, and it maintained no offices but conducted all of its business on company premises (R. 103, 114-115; 38, 40, 124, 127, 132, 135). Company counsel stated at the hearing that up to the date of the Act, the Company "occupied a relation" to the Association that is "prohibited by the Wagner Act" (R. 217).

Events of April to July 1935, when enactment of the Act appeared imminent.—In April and May 1935, in anticipation of passage of the Act, officers of the Association conducted a company-wide canvass of the employees, the announced purpose of which was to secure funds with which the Association or a like successor could operate after the Act went into effect (R. 103; 123-125, 142-143, 212-213, 269).⁵ The Company openly

⁵ Before the canvass began, Askew, president of the Association, conferred with Dumas, assistant to the vice president of the Company, and obtained the agreement of the Company

approved and supported the canvass by granting Association solicitors leaves of absence with pay, paying their travelling expenses, and making available to them company automobiles, premises, time, and other facilities (R. 103, 108-109; 38, 124-125, 142-143, 201, 212-213). Weil, who was vice president of the Association, as well as a supervisory employee,* canvassed Louisiana and Mississippi, holding meetings of employees on company time and premises, telling the employees that enactment of the Act would outlaw the Association, that "quite a few officers of the Association" felt the employees should be represented by

to finance the canvass (R. 124-125; 212-213, 217). The territory in which the Company operates was divided among the officers of the Association and all of it was systematically canvassed (R. 124). Arrangements were made beforehand so that on the date an officer was to visit a larger town all employees from the smaller exchanges in nearby towns were brought into the larger town to attend the meeting (R. 142-143, 145-146).

* Weil had been an officer of the Association continuously since 1929 or 1930 (R. 141). From 1935 to 1939 Weil's position with the Company bore the title of "plant practice supervisor" of the Louisiana Division and included the responsibility for distributing, clarifying and interpreting plant routine instructions from the home office to the appropriate persons in Louisiana (R. 106 note; 140, 177-178, Tr. 257-258). Among those to whom he transmitted and explained instructions were installation foremen (Tr. 257). Upon these facts the Board held that Weil was viewed by the employees as a management representative and that the Company was responsible for his activities in the Association (R. 106 note).

their own organization, and that funds were vital for that purpose (R. 103-104 note; 142-143).⁷ Another supervisor, A. F. Bear, district traffic manager at Shreveport, Louisiana, directly assisted the solicitation by addressing an Association meeting held on company time and premises (R. 104; 201). He stated in his address that the Company had supported the Association for 16 years and that the "least" the employees could do was give their contributions because the Company would be "unable to interfere" in the event that "outside" labor unions attempted to organize the workers (R. 104; 201-203). The campaign resulted in a fund of approximately \$5,000, part of which was received by the Association after the Act went into effect (R. 104, 108-109; 127, 269, 272).

Since the Association had never theretofore had a treasury or treasurer, the money was turned over to Mrs. Jane Wilkes, general secretary of the Association, who was for this purpose appointed acting treasurer (R. 104; 126, 132, 192). Mrs. Wilkes' position with the Company, that of secretary to the general commercial manager, was such as to identify her in the eyes of the employees as a representative of management and

⁷ Weil spent 10 days canvassing Louisiana and Mississippi (R. 142). The Company paid his full salary and all his expenses during those 10 days (R. 143).

render the Company responsible for her activities in the Association (R. 104; 189-190).^a

The Company's statement to employees upon the passage of the Act.—Following the effective date of the Act, the Company did not advise the employees that it would no longer recognize or deal with the Association as their collective bargaining agent (R. 108, 115; 220, 236). To the contrary, on July 20, 1935, the Company issued to the employees a written bulletin entitled "Memorandum—Wagner Bill Interpretations," beginning as follows: "The Company can continue to pay salaries of Association officers who are filling their regular jobs and doing Association work incidental to their regular duties." The bulletin went on to recite: "The Company can continue to pay the salaries of Association officers while engaged in conferring with management and while they are meeting among themselves before or after these conferences to discuss their presentation or disposition of the matters involved"; "The Association may continue to use Company premises for their meetings without charge"; "The Association may use Company typewriters and other office facilities when such

^a The nature of her relationship to the management is made clear by the fact that from the position of secretary to the general commercial manager she was next promoted to the position of personnel supervisor over the Company's entire nine-state territory (R. 104; 189-190). She had been an officer of the Association since 1931 (R. 191-192).

is incidental to the regular Company use of these facilities" (R. 105; 284). While the bulk of the bulletin was given over to a recital that the foregoing aspects of the Company's relationship with the Association would continue as before, it did state that the Company could not pay travelling expenses, could not bear the expense of stamps, stationery and supplies nor provide space for the full time use of the Association without proper charge. The bulletin also stated that "all Management Representatives are anxious to cooperate and will endeavor to meet Association officers at such times and places as will be most convenient and economical." Aside from its title, the bulletin made no mention of the Wagner Act. Nowhere did it tell the employees of their rights under the Act nor did it make mention of the fact that the Act rendered illegal any of the Company's former practices. Rather, as the Board found, it was an announcement by the Company to the employees that the Association would continue to exist and function after the Act, with Company aid and cooperation (R. 108, 115).

In addition to the foregoing bulletin issued by the Company, each employee received a letter from the president of the Association, Askew, who at that time was and for many years had been the company cashier for the State of Georgia, a position which, of course, identified him in the eyes of the employees as a management

representative (R. 104; 122, 130, 269-272, Bd. Exh. 3).⁹ The letter was dated July 12, 1935 (R. 172; 269). It stated that the Association in its drive for money to finance the continuance of the Association had collected approximately \$5,000 (R. 104; 269-272). It recited that the enactment of the Act does "not affect the status of our Association" except respecting the shifting of expenses from the Company to employees, and told of the assurances given by the Company's vice president, who due to the president's illness was acting chief executive, that the Company would continue to deal with the Association and that "the management wished to cooperate with the Association in every way possible" (R. 104; 269-272).

At about the same time the Company's supervisory employees did transmit orally and third hand to the employees a statement of the Company's vice president that the Company intended to pursue a "hands-off" policy in compliance with the Act (R. 104-105, 108; 133-134, 196, 214-215, 221-222, 229-230).¹⁰ The Board found that the

⁹ Askew had been general secretary of the Association from January 1920 until March 1928, chairman of the Association's Judiciary Committee from 1930 until 1933, and president since 1933 (R. 123). He had been State Cashier since 1929 (R. 122, 131); prior thereto he had been supervisor of the Company's mailing bureau (R. 131). See also note 11, p. 20, *infra*.

¹⁰ The supervisors acted pursuant to instructions which were transmitted to them by their own superiors in the Com-

oral declarations of the supervisors made under these circumstances did not suffice to restore to the employees full freedom of choice with respect to organization for collective bargaining (R. 108). Such statements by supervisors were completely overshadowed by the concurrent written notices which made it clear that the Company would continue to support and deal with the Association (R. 108-109).

Revision of the Association's constitution and joint agreement with the Company in 1935.— In August 1935, officials of the Association, utilizing the above-mentioned funds, revised the constitution of the Association and its joint agreement with the Company, retaining the same name and largely the same leadership as before (R. 105-108; 127-130, 141, 143-145, 190-191, 269-272, 291-300). The manner in which the revision was effected discloses, and everything

pany hierarchy, and which these superiors in turn received from the Company's high-ranking officials (R. 104-105; 195-196, 214-216). The instructions were issued by Company Vice-President Warren on July 16, 1935, at a meeting of these officials, at which were also present by invitation, the Association's president and its general secretary, and at which Warren read certain portions of the Act, and declared that under the Act the Company was required to cease "financial or other support" of the Association, that the employees had the right to select their own representatives for collective bargaining, that the Company must exercise a "hands-off" policy, and that it was the Company's intention to comply with the law (R. 104; 133-134, 196, 214-216). Warren was then acting chief executive of the Company. He succeeded to the presidency in August 1935 (R. 104; 229).

which was said and done in connection with it, deliberately emphasized to the employees, the continued existence of the Association. For example, the revisions of the constitution and joint agreement were drafted by a committee of the General Assembly, the governing body of the Association, which met at Association President Askew's call in the Company's Atlanta office (R. 105; 128-130, 143, 286-288). Dumas, assistant to the Company's vice-president, assured the committee that should the changed joint agreement be approved by the Association, the Company would enter into it, and would also check off dues for the Association (R. 105; 144, 148, 212-214). The revised constitution and joint agreement were thereafter approved by the Association General Assembly at a special meeting called for the stated purpose of formulating "plans for financing and *continuing* this organization in accordance with the provisions of the Wagner Labor Relations Bill" (R. 105-106; 129-130, 275, 281-282).¹¹ Dumas addressed this meeting stating that in order to spare the Association the expense, the Management would no longer utilize regular As-

¹¹ After he had taken a leading part in initiating the revision of the constitution, Askew resigned from the presidency of the Association and was succeeded by the vice president, Weil; he continued as a member of the Association, however, until 1939, when he resigned because he was considered by the employees to be a supervisory employee, although his position had been the same since 1929 (R. 104, 105-106; 123, 129-131, 141-142, 144-145, 275-276).

sociation meetings "for discussions of sales, safety practices, etc.," but "where the Management wished to use the facilities of the Association to broadcast information these meetings would be considered strictly as special meetings called by Management, the expense of which could be lawfully borne by them" (R. 106; 147, 279).

The revised constitution itself recited, *inter alia*, that the Association had been formed in 1919, that it had been in "continuous operation" since that time, and that the document constituted a "revision * * * superseding" previous revisions of the constitution, the last of which became effective in May 1934 (R. 107, 109; 308).¹² Five years' membership in "the Association" was made a condition of eligibility for the office of president and 1 year's membership was required for holding local office (R. 107; 164, 308).¹³

¹² In 1940, after the Association had retained counsel, the recital of the constitution was changed so as to read that the Association was formed in "1935 * * * supplanting a former organization of employees by the same name" (R. 112-113; 314). Similarly, the minutes of the 1940 annual meeting refer to it as the "5th Annual Meeting," whereas the minutes of the annual meetings between 1936 and 1939 refer to the meetings as the "17th" to "20th Annual Meeting[s]," thus dating the Association back to 1919 (R. 109, 113; 308, 309, 311, 312).

¹³ The structure of the Association remained substantially unchanged. It continued to operate through a hierarchy of committees, each local sending a representative to a district board, each district board sending a representative to a state board, and there being above these three other bodies (R. 296-297, Bd. Exh. 4, Art. III, Bd. Exh. 15, Art. III). While

On September 3, 1935 the Company signed a joint agreement with the Association (R. 106; 148, 217, 284-286). The new joint agreement eliminated all references to Company assumption of the expenses of the Association, as provided in the joint agreements theretofore entered into between the Association and the Company (R. 106; 284-286, 299-300). It incorporated a new plan of joint conferences of Association and management representatives for the purpose of settling grievances (R. 106; 284-286, 299-300). At the time the agreement was signed, the revised constitution had not yet been ratified nor had the employees been canvassed concerning their adherence to the Association (R. 106; 149-150, 160-161, 286-288). Indeed the notice from the Association to its members telling them of the revision was not sent out until the day the agreement was signed (R. 106-107; 148, 155-157, 286-288).¹⁴ On September 3, 1935, Weil, as president of the Association, sent a letter to members of the Association, in which he informed them that the officers had prepared a

the names of several of these bodies were slightly altered, there was no real change in operation (R. 296-297). Indeed, the revised constitution retains the former titles of articles of the constitution and the same arrangement and numbering except for the insertion of an article relating to finances (Bd. Exhs. 4 and 15).

¹⁴ Warren, the Company's president, stated he did not think it was unusual that the Association should be able to show to employees a contract signed before canvassing them concerning their adherence to the Association (R. 106; 236-240).

"revised constitution" for "our Association" and stated that "our employee body, as manifest in your recent special contribution, desires no outside influence in our ranks" (R. 106-107; 157-158, 286-288). Subsequently, other letters were sent out by the officers of the Association explaining that the revision was "an Amendment to your present plan" and that the changes, "while not affecting the operation of our plan, were desirable in that they eliminated many references to the Company" (R. 107; 159-162, 288-300).

On October 1, 1935, Mrs. Wilkes, as secretary of the Association, sent membership applications and check-off authorizations to "Local Chairmen" of the Association for signature by the employees (R. 107; 132, 291-294). In her instructions respecting these documents, she directed the Local Chairman to have the membership applications signed "by each member who desires to *continue* his or her membership in the Association * * *" and "when requesting the present members of your Local to sign the new applications for membership * * * it should be explained that the purpose of the form is to provide the officers of the Association with a complete and uniform record of membership in the Association and *is not to be considered as a new application*" (R. 107; 160-161, 292, italics added). All the communications and transmission of membership applications and check-off authorizations from Mrs. Wilkes to

the Local Chairmen and their return to her, were handled by the Company's inter-office mail facilities (R. 108, 137). The constitution was not ratified until February 1, 1936 (R. 106; 150).¹⁵

Relationship between Company and Association, 1935-1940.—Although the revised constitution of the Association was not ratified until February 1, 1936, the Company began on November 1, 1935 to check off dues of those employees who signed authorizations (R. 106-107, 115; 150, 218-219, 236-238, 240-241, 252-253).¹⁶ Mrs. Wilkes continued as treasurer, using the same bank and the same account, for Association funds as that in which she deposited the approximately \$5,000 collected at about the time the Act was passed (R. 107-108, 109-110; 192, 253-254).

Until 1937, the Company, following the course set forth in the memorandum of "Wagner Bill Interpretations" distributed in July 1935 (*supra*, pp.

¹⁵ Article XVI of the constitution in effect on July 5, 1935 (Bd. Exh. 4) provided that amendments thereto "shall become effective if ratified by a majority vote of two-thirds of the Locals within 6 months from the date of adoption by the General Assembly" (R. 191). The revisions of the constitution were treated by the Association as amendments, as in fact they were, and the procedure of ratification provided by the foregoing article was followed in securing their adoption (R. 190-191, 289, 295). This procedure was not completed until February 1, 1936 (R. 150).

¹⁶ The Association continued to function under the old constitution until February 1, 1936 (R. 191). No new elections of officers were held until the terms for which they were elected expired in 1936 (R. 153-154, 157-159).

16-17), continued to permit the Association free use of company facilities and property for Association local meetings and other business and allowed Association representatives to meet together for some purposes during working hours without loss of pay (R. 108; 137, 169-173, 200). In January 1937 and April 1937, the Company issued and distributed to the employees revised memoranda containing further "interpretations" of the Act, and pursuant thereto withdrew all remaining forms of direct financial support and the grant of free use of facilities to the Association (R. 110-112, 115; 169-171, 173-176, 309-311).

The leadership of the Association, however, continued until 1939 or 1940 to be in Weil and Mrs. Wilkes, for whose activities in the Association the Company was responsible (R. 104, 106, 109-110, 115; 140-142, 177-178, 189-190, 192). Weil continued as president of the Association until 1939, and was vice president in 1940 (R. 109; 141). Mrs. Wilkes continued as secretary-treasurer until 1938 and was vice president-treasurer in 1938 and 1939 (R. 110; 192).¹⁷

Opposition of supervisors to the Union.—Late in 1940, the Union began to seek members among the Company's employees at its Shreveport,

¹⁷ Weil continuously held office in the Association from 1930 until 1940 (R. 141); prior to 1923 he had been a local representative (R. 141). Mrs. Wilkes continuously held office from 1931 until 1939 (R. 192).

Louisiana, office, and established a local there in opposition to the Association (R. 117; 209-211). Shortly thereafter, the long distance supervisor in that office, acting upon the suggestion of the District Traffic Manager that she "influence" her "people" against the Union (R. 117; 207), told two subordinates that "we really did not need" the Union, that the Association was "everything that they had or could get," and that the supervisor "did not feel that they would get any better * * * than they did out of the Association" (R. 117; 208). The General Traffic Manager subsequently reprimanded the District Traffic Manager for this, but there is no evidence that the reprimand was made known to the employees generally (R. 117; 243-244). Some months later, the Employment Supervisor in the same office, referring to an employee who had joined the Union, declared that it was a "shame" the Company could not discharge its "dissatisfied" employees (R. 117; 204, 202-203).

Events of February and March 1941.—On December 17, 1940, the Union filed a charge with the Board, and on January 15, 1941, an amended charge, which initiated these proceedings (R. 99-100; 17-18, 50). On February 10, 1941, the Association was informed that the Board was about to issue a complaint alleging that the Association was maintained in violation of the Act. It thereupon wrote Company President Warren, referring

to the imminent Board action and stating that "because such a charge clouds this Association's right to represent the employees of the Company * * * the Association will not undertake to act as their collective bargaining agent pending a canvass of its membership by signed ballot" (R. 113; 316-317). On February 11, 1941, Warren replied, "It is noted that, pending a canvass of your members, you will not undertake to represent the employees of this Company as their collective bargaining agent" (R. 113; 317-318).

The Association thereupon arranged for a signed poll of its members, to determine whether they desired to "continue" their Association membership and whether they wished the Association "to represent [them] in collective bargaining" with the Company (R. 114, 116; 322-333). Meanwhile, the Company posted notices on its bulletin boards setting forth Sections 7 and 8 of the Act and announcing (R. 113-114, 115; 26-27, 232-234, 318-319):

The Company recognizes its employees' right to join, form or affiliate with any labor organization of their own choice and freely to exercise all rights secured them by this Act.

The Company guarantees its strict compliance with all the provisions of this Act and that no employee will be discriminated against or suffer any other penalty because of his or her exercise of any right secured by this Act.

The Company is not interested in whether its employees join or do not join any labor organization.

At the same time the Company advised its supervisory staff, but not the employees, of the exchange of letters with the Association, and instructed the staff to refrain from in any way interfering with or influencing the employees in their choice of a bargaining representative (R. 113, 115-116; 318-319).

A large majority of the employees voted "yes" to the questions propounded on the signed ballot (R. 114, 116; 47-49). On February 28, 1941, the Association advised the Company by letter of the results of the canvass, and requested recognition (R. 114; 319-320). After confirming the advice, the Company, on March 6, 1941, recognized the Association as the "authorized collective bargaining agent" (R. 114; 320-334), and thereupon resumed bargaining relations with it pursuant to an existing exclusive bargaining contract dated July 30, 1940, which was not regarded as having been cancelled by the exchange of letters of February 10 and 11, 1941 (R. 113-114; 238-239, 300-304, 334).

B. ON THESE FACTS THE BOARD PROPERLY CONCLUDED THAT THE COMPANY DOMINATED, INTERFERED WITH, AND SUPPORTED THE ASSOCIATION

Upon the foregoing facts the Board's ultimate findings that the Company has since July 5, 1935,

dominated and interfered with the administration of the Association, and contributed financial and other support thereto, in violation of Section 8 (1) and (2) of the Act (R. 116, 119), are clearly supported by substantial evidence.

The Association, as it existed when the Act became effective, was not an organization which could properly function as the collective bargaining representative of the Company's employees. Its initiation under Company sponsorship (see pp. 12-13, *supra*), followed by 16 years of utter financial dependence upon the Company (see pp. 12-15, *supra*), together with the identification in the eyes of its employees of its main officers as management representatives (see pp. 14, 15-16, 17-18, *supra*), made the Association a company-dominated and supported labor organization. While acts of domination, interference and support which occurred prior to the effective date of the Act were not violative of any law and, of course, are not unfair labor practices which the Board may remedy, nevertheless, the conduct of an employer, in continuing to deal with such a labor organization as the representative of its employees after the effective date of the Act, does violate the Act. Both the Board and the courts are entitled to examine the pre-Act history of a labor organization with which an employer deals after the effective date of the Act, for the purpose of determining whether

such labor organization is in fact the lawful and freely chosen representative of the employees.¹⁸

Here the Company, a week after the Act became effective, announced by written notices to its employees that it would continue to deal with the Association in adjusting questions affecting its employees (pp. 16-17, *supra*). Less than 2 months after the Act became effective it signed a contract with the Association and agreed to check off dues to it (pp. 20, 22, *supra*). At the time these acts occurred the Association had not achieved any financial independence nor had it rid itself of a president and secretary who in the eyes of the employees represented management rather than employee viewpoint (pp. 13-25, *supra*). It is true the Association had in its bank account the sum of \$5,000 which had been collected on the eve of the Act's enactment (pp. 15, 19, 24, *supra*). But the Company had paid the full expenses of the canvass to raise this money, and by the cooperation of its officials had lent its coercive weight to the pleas for the donation (pp. 13-15, *supra*). And the Company had announced

¹⁸ *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 268-270; *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 273; *National Labor Relations Board v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 244-248; *National Labor Relations Board v. Falk Corp.*, 308 U. S. 453, 460; *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 586, 588.

to its employees, that where Association business was incidental to Company business, officers of the Association would be permitted to continue the use of Company time without deductions from their pay (pp. 16-17, *supra*). Both of the Congressional Committees reporting on the intent of Section 8 (2) of the Act pointed out that this section prohibited bargaining with a labor organization so supported:

Collective bargaining is reduced to a sham when the employer sits on both sides of the table by supporting a particular organization with which he deals, by * * * permitting such representatives to conduct organizational work among the employees during working hours without deduction of pay.¹⁹

It seems clear that an organization or a representative or agent paid by the employer for representing employees cannot command, even if deserving it, the full confidence of such employees. And friendly labor relations depend upon absolute confidence on the part of each side in those who represent it.²⁰

Thus, by entering into a contract with the Association less than 2 months after the Act became effective, when the Association had neither secured financial independence nor rid itself of

¹⁹ House Report No. 1147, 74th Cong., 1st Sess., p. 18.

²⁰ Senate Report No. 573, 74th Cong., 1st Sess., p. 10.

officers who represented management, the Company violated Section 8 (2) of the Act. In so contracting the Company entrenched with its employees, as their collective bargaining representative, the organization it had over the years sponsored and supported.

Contracting with, and thereby recognizing, a company-dominated labor organization, is the usual climax to the sponsoring and supporting of such an organization. It is by such means that the employer realizes the fruits of interference. The signing of a contract carries to a conclusion the building up of the employer's chosen representative for its employees. Indeed, the usual aim in dominating and supporting an organization is to have it rather than some other organization act as the representative of the employees. Only with the signing of a contract is the organization actually firmly entrenched as the representative. And such signing brings home to the employees for the first time the full effect of the domination, interference and support. Their employer is asserting that it has made a contract with the employees through their representative, when in fact the employees have not had their own representative at the bargaining table. This is precisely the type of employer conduct which Section 8 (2) outlaws.

The Company has sought to evade the inevitable logic of the foregoing analysis by contending that

the Association with which it contracted was not in fact the same labor organization as the Association which had existed at its plant prior to the Act. The Company contends that with the enactment of the Act the old Association ceased to exist and in the months following the Act a new Association was formed. However, the evidence reviewed conclusively shows that the Association continued with the same name, the same structure and the same officers, without any break in its organizational continuity.²¹ And the Board so found (R. 115). Not only was there in fact a continuance of the same organization, but both the Company and the Association repeatedly emphasized to the employees that the changes made were merely amendments designed to eliminate references to the Company and provide an independent method of financing the Association (see pp. 19-24, *supra*).

It is now firmly established that the Board may find that the continuation in the same or a

²¹ Company President Warren testified that the Company never took any steps to dissolve the Association, that he had "no knowledge of any dissolution" of that organization, and that so far as he was aware there has been no "time since 1919 when there wasn't an Association in some form, representing the employee body" (R. 236). Vice-President Dumas testified to similar effect (R. 220). And Association President Weil testified that he believed the passage of the Act *ipso facto* "disbanded" the Association, but that he knew of no "other way" in which it was attempted to dissolve it (R. 147-148).

superficially altered form of "an old plan or organization the original structure or operation of which was not in accordance with the provisions of the law" is an obstruction to the employees' free choice of representative, and that "the effects of the long practice cannot be eliminated and the employees rendered entirely free to act upon their own initiative without the complete disestablishment" of the tainted union. *National Labor Relations Board v. Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 250, 251; *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270; *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 275; *National Labor Relations Board v. Falk Corp.*, 308 U. S. 453, 460-461; *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 591; *H. J. Heinz Co. v. National Labor Relations Board*, 311 U. S. 514, 521, 523; *Westinghouse Electric & Manufacturing Co. v. National Labor Relations Board*, 312 U. S. 660, affirming 112 F. (2d) 657, 659-660 (C. C. A. 2). *Ct. Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 236." The

²² Similar decisions of the various circuit courts of appeals are too numerous and commonplace to warrant citation. Indeed, the court below has itself eloquently recognized the principle in *National Labor Relations Board v. Brown Paper Mill Co.*, 108 F. (2d) 867, 870-871, certiorari denied, 310 U. S. 651. And there has been no case since the *Pennsylvania*

Board properly applied this principle upon the facts of the instant case.

The announcement of the Company to its employees that it would continue to pay salaries of Association officials when their Association duties were incidental to their duties for the Company, and accord the Association facilities such as meeting places (see pp. 16-17, *supra*), made it clear to employees that the Association would continue to be subject to the strong influence necessarily implicit in the acceptance by a bargaining agent of such favors from the party with whom it must deal. Thus the Company not only continued to subject the alleged representative of its employees to the corrupting influence of such support, but flaunted this fact in printed notices to all its employees. Such support continued until 1937 (see pp. 24-25, *supra*), and unquestionably constituted a violation of Section 8 (2) of the Act.²³

Greyhound case in which disestablishment of a labor organization which has been dominated, interfered with, or supported, has been held inappropriate to effectuate the policies of the Act.

²³ The House Committee on Labor, in commenting on Section 8 (2), quoted with approval a characterization of the employer's payment of employee representatives for time spent in performing duties on behalf of a company union as "the subsidizing of an active group of propagandists among the employees for the type of employee representation the company would prefer to deal with." House Report No. 1147, 74th Cong., 1st Sess., p. 18; cf. Senate Report No. 573, 74th Cong., 1st Sess., p. 10.

Although all payments of officers of the Association for time spent on Association work, and all free use of the Company's property came to an end in 1937, when the Act was held constitutional (see pp. 24-25, *supra*), for several years thereafter the leadership of the Association continued to be in persons whom the Board found represented the management rather than the employees (see pp. 14-16, 25, *supra*). The continuance of Weil as president of the Association until 1939 and as vice president in 1940 (see p. 25, *supra*), and of Mrs. Wilkes as secretary-treasurer in 1938 and 1939 (see p. 25, *supra*), Mrs. Wilkes' position as secretary to the general commercial manager and chief engineer, from 1934 until 1940 when she became the Company's chief personnel officer (see pp. 15-16, *supra*), and Weil's position as plant practice supervisor for the State of Louisiana from 1935 until 1939 (see pp. 14-15, *supra*), placed them in the supervisory class. As the Board found, "their duties allied them more closely with the management of the respondent than with the other employees, and it is reasonable to assume that to such employees they represented the management" (R. 104n., 106n.). Moreover, the fact that Weil continuously since 1930 and Mrs. Wilkes continuously since 1931, each served as an officer of the Association (R. 141, 192) and during the first 5 years of that period was paid by the Company for the time

spent allegedly representing employees," marked each of them as a "company representative."²² The Board's determination that the Company is responsible for all they did in the Association subsequent to the effective date of the Act (R. 104, 106) is therefore correct. In this additional way the Company continued active domination and interference with the administration of the Association for several years after 1935, thereby violating Section 8 (2) of the Act.

While all the foregoing conduct of the Company, which constituted active domination, interference, and support, came to an end by 1940, in that year, when an outside union appeared at one of the Company's exchanges, the Company, by its super-

²² It is to be noted that as late as May 1935 Weil devoted 10 full days to Association affairs and was paid his full salary by the Company, as well as all his expenses, for that time (R. 142-143).

²³ *International Association of Machinists v. National Labor Relations Board*, 110 F. (2d) 29, 43, affirmed, 311 U. S. 72, where the Court of Appeals for the District of Columbia said:

Acme Welfare was a company union. It follows necessarily that its leading promoters were company representatives. Men accustomed to such submission seldom regain independence overnight. * * * All that they did, therefore, is imputable to the company. * * *

The courts have uniformly sustained the Board's finding that the activity of an officer or representative of a company-dominated union in establishing a substitute labor organization similar in personnel and structure to the old binds the employer and subjects the new organization to the infirmities of the old. *Machinists case*, 311 U. S. 72, 78-79, 80-81; *National Labor Relations Board v. American Mfg.*

visory employees, warned employees against such a union and urged continued adherence to the Association (see pp. 25-26, *supra*). As the Board found (R. 116, 118), this conduct not only violated Section 8 (1) of the Act but also violated Section 8 (2). Cf. *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 599-600.

The Company's written statement to the Association in February, 1941, that it "noted" that the Association would not "undertake" to act as collective bargaining agent "pending" the canvass (*supra*, pp. 26-27), obviously did not constitute withdrawal of recognition or repudiation of the Association. Although the Association did not bargain during the 24-day period, the pre-existing

Co., 106 F. (2d) 61, 68 (C. C. A. 2), affirmed, 309 U. S. 629; *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 599; *Republic Steel Corp. v. National Labor Relations Board*, 107 F. (2d) 472, 476, 477 (C. C. A. 3), certiorari denied respecting this part of the case, 310 U. S. 655; *Union Drawn Steel Co. v. National Labor Relations Board*, 109 F. (2d) 587, 590-591 (C. C. A. 3); *National Labor Relations Board v. Condenser Corp.*, 128 F. (2d) 67, 73 (C. C. A. 3); *National Labor Relations Board v. Thompson Products, Inc.*, 130 F. (2d) 363, 367 (C. C. A. 6); *National Labor Relations Board v. J. Greenebaum Tanning Co.*, 110 F. (2d) 984, 985-986 (C. C. A. 7), certiorari denied, 311 U. S. 662; *American Smelting & Refining Co. v. National Labor Relations Board*, 126 F. (2d) 680, 684, 685 (C. C. A. 8); *Swift & Co. v. National Labor Relations Board*, 106 F. (2d) 87, 92, 93, 94, 95 (C. C. A. 10). Cf. *System Federation No. 40 v. Virginian Ry. Co.*, 11 F. Supp. 621, 627 (E. D. Va.), affirmed, 84 F. (2d) 641 (C. C. A. 4), affirmed, 300 U. S. 515. *A fortiori* the continued activities in the same, rather than a new, organization must be imputable to the employer.

contract remained in force and the letters exchanged between the Association and the Company indicated on their face that relations would be resumed upon successful completion of the poll. It is thus plain that there was no definite or permanent severance of the relations between the parties at this, or any other, time.

In these circumstances, we submit, the Board was clearly entitled to find, as it did (R. 108-109, 115-116), that the Company's mere declarations of neutrality with respect to organizational activities, its general assertions of a purpose to comply with the law, the discontinuance in 1937 of direct overt assistance and support of the Association, and the "noting" in 1941 of the Association's intention to suspend bargaining pending a canvass of its members, did not suffice to restore to the employees that full freedom of self-organization contemplated by the Act. The Board was entitled to conclude that the effects of the Company's long history of domination and support of the Association "could not, under the circumstances, be dissipated except by an explicit announcement to the employees that the [Company] would no longer recognize or deal with the Association. In the absence of such action by the [Company], its employees were not afforded the opportunity to start afresh in organizing for the adjustment of their relations with the employer which they must have if the policies of the Act are to be effectuated" (R. 115-116). Hence, the Board's further conclu-

sion was also proper, that the employees' selection of the Association did not reflect a free choice (R. 116)."

Accordingly, the case presents an unmistakable violation of Section 8 (1) and (2) of the Act. The disestablishment order is the normal and judicially approved remedy. See cases cited, *supra*. See also, *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240, 262; *National Labor Relations Board v. Automotive Maintenance Machinery Co.*, 315 U. S. 282, reversing 116 F. (2d) 350 (C. C. A. 7)."

C. THE COURT BELOW ERRED IN SETTING ASIDE AND REFUSING TO ENFORCE THE BOARD'S ORDER

Despite this clear propriety, as we think, of the Board's findings as to the unfair labor practices

" Whether in a particular case; the action taken by the employer is sufficient to reestablish freedom of choice among the employees, is, of course, a question of fact entrusted to the Board for determination. *Westinghouse Electric & Manufacturing Co. v. National Labor Relations Board*, 312 U. S. 660, affirming 112 F. (2d) 657 (C. C. A. 2); *H. J. Heinz Co. v. National Labor Relations Board*, 311 U. S. 514; *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584; *Western Union Telegraph Co. v. National Labor Relations Board*, 113 F. (2d) 992 (C. C. A. 2). Cf. *International Association of Machinists v. National Labor Relations Board*, 311 U. S. 72, 82.

" This Court has repeatedly sustained the proposition that perpetuation of a union which is company dominated and supported is not justified by evidence that a majority of the employees desire it to represent them. The *Newport News* case, 308 U. S. at 248, 251; the *Falk* case, 308 U. S. at 455, 460-462; the *Link-Belt* case, 311 U. S. at 587-588; the *Automotive Maintenance* case, 315 U. S. 282.

and of its disestablishment order, the court below held that the findings were "without support in the evidence" and that the order was "not an exercise but an abuse" of the Board's discretion (R. 340). It took the position that the Board was not permitted to find (R. 341)—

that the Association was and remained tainted and could not represent the employees because there had been no sufficiently clean break away from the old, to establish a new Association, by a complete dissolution and abandonment of the old and a fresh start from scratch;

but that the Board was required to consider the case (R. 342)—

from the standpoint of the effect of the evidence to establish that at the time of the complaint and hearing, the Association was dominated or fostered by the Company, and there was therefore not a free choice of the employees * * *

Examined from this standpoint, the court declared, the findings were without support (R. 342). And the court further held that even if the Association had not been "purged" of company support, it would nevertheless deny enforcement of the Board's order of disestablishment because a majority of the employees had, as the court stated, "freely" chosen the Association as

representative (R. 342-343). We submit that the court plainly erred.²⁸

The holdings of the court that the Board was not entitled to find that "complete dissolution and abandonment" of the old Association and "a fresh start from scratch" was a condition precedent necessary to validity of a new organization (R.

²⁸ The summary of the evidence by the court below gave a completely erroneous picture. The court declared (R. 341):

The proof makes it completely clear; that since the passage of the Act, the Company and its employees have sedulously endeavored to conform to it, and that except in respect of one or two acts of minor officials, which were promptly repudiated, there has been no departure by the Company or any of its employees from this attitude; that the old Association has been completely superseded by the present one, formed under a new constitution; that the Company, because of the effort at organization of the rival Union, declined to recognize the Association further without an election; and that there was an election with an overwhelming number of the employees, more than four-fifths of the whole, voting for the Association * * *

But the proof shows, as we have pointed out and the Board found, that the old Association was not "superseded" but continued under a revised constitution with the same name and substantially the same officer personnel (*supra*, pp. 19-25); that the Company did not decline to recognize the Association because of the efforts of the rival Union, but merely "noted" the Association's proposal for temporary suspension of relations pending a canvass (*supra*, p. 27); that the "election" was a signed poll of Association members conducted under the Association's auspices (*supra*, pp. 27-28); and that the anti-Union acts of the Company's officials were never repudiated to the employees (*supra*, p. 26).

341), that the validity of the Association turned, instead, upon whether it was "dominated or fostered" by the Company "at the time of the complaint and hearing" (R. 342), and that even if the Association had not been "purged" of company support, its disestablishment was improper because the employees had "freely" chosen it as their representative (R. 342-343), all appear to proceed from the same premise. The premise is that full freedom of choice, long thwarted and confined by employer sponsorship, support and domination of an organization, may be restored to employees even though the dominated organization, which typifies and embodies the employer's coercive practices, continues to be recognized by the employer. From this premise the court concludes that at some unspecified point, the cessation of interference by the Company restored such freedom to the Company's employees in the instant case.

Assuming, *arguendo*, that the premise is valid that such freedom may under some circumstances be restored despite continued recognition of the dominated union,²⁹ we submit that the court below erred in holding, upon the facts of the instant case, that such freedom was reestablished here, and that the Board's contrary conclusion was

²⁹ We shall show presently that the premise is not tenable (pp. 44-52, *infra*).

therefore without rational basis in the record. We have already shown (*supra*, pp. 35-40) the reasonableness of the Board's conclusion on the facts of this case that, despite the Company's declaration of neutrality and withdrawal of all direct overt support from the Association, freedom of choice was never restored to its employees (R. 108-109, 115-116). Since the Board's findings were reasonable, they were, of course, entitled to finality even though the court may have thought that the Board should have made different findings. *National Labor Relations Board v. Nevada Consolidated Copper Corp.*, 316 U. S. 105, and cases there cited; cf. *Rochester Telephone Corp. v. United States*, 307 U. S. 125, 146.

But more than this, we think that the premise upon which the court proceeded is unsound, and, further, that the court's holding that the unlawful conduct of the employer must be continuing "at the time of the complaint and hearing" is directly contrary to the language of the statute. We shall discuss each of these contentions in turn.

1. *The court's premise that freedom of choice may be re-established although a company dominated union continues to function and is not disestablished is untenable*

As we have stated, the holding of the court below appears to be based upon the premise that a labor organization which, like the Association, has been formed under the sponsorship of the em-

ployer and has been dominated and supported by him for many years, can be "freely" chosen by the employees, presumably at some time after the overt coercive practices which brought it into existence and sustained it have ceased. This premise, we submit, cannot be supported.

The objects of the practices in which an employer engages when he sponsors and supports a company union, like the Association, are its continued existence and the employees' adherence to it. Such an organization therefore stands and inevitably must stand in the eyes of the employees as the employer's candidate for selection as their collective bargaining agent. It is contrary to reason to assume that at some point in its existence the employees will cease to identify such an organization with the employer who brought about its creation and nurtured and sustained it. Rather, it is entirely probable that to the employees such an organization will always be regarded as the employer's choice, and that it will therefore always enjoy the advantages which that position, the result of the employer's interference, affords it. In the present case, obstruction to full freedom of choice has its origins both in the pre-Act history of the preferred organization and in fresh post-Act domination, interference and support with respect to it. So long as the employer continues to recognize the preferred organization as

the bargaining representatives of its employees, the impairment of employee freedom continues.

The position of the court below is essentially the same as that of the employers in the various cases before this Court, commencing with the *Greyhound* cases, in which the propriety of the disestablishment remedy upon findings of Section 8 (2) violation has been challenged. This Court held in the *Pennsylvania Greyhound* case that the Board may find that the mere continuance of a once company-dominated organization as collective bargaining representative gives it "a marked advantage over any other" (303 U. S. at 267) and hence constitutes a continuing obstacle to self-organization which can only be removed by its complete disestablishment.³⁰ The propriety of the Board's inference in this regard lies at the very basis of the disestablishment order, and has been universally applied by the Board on Section 8 (2) findings and approved without exception by the courts in hundreds of cases. The holding of the court below denied to the Board power to draw this inference.

It is no answer, as the court below apparently suggests (R. 341-342; see also Company Opposition to Petition for Certiorari, pp. 15-16), that in

³⁰ For the history and background of the disestablishment remedy, see this Court's opinion in the *Pennsylvania Greyhound* case, 303 U. S. at 266-268; and the landmark decision in *Texas & N. O. Ry. Co. v. Brotherhood of Railway Clerks*, 281 U. S. 548.

the instant case the Company ultimately, in progressive stages, withdrew from the Association all overt and direct financial aid, that it advised the employees of their rights under the Act and asserted its own neutrality, that it may have since committed no further unlawful acts, and that there has been a short period during which, although its contract remained in effect, the Association ceased negotiating with the Company pending a signed vote of the employees who had been subjected to the interference. It does not follow from these facts that the employees have ceased to regard the Association as the product of the Company's sponsorship and the recipient of its support, or that it will cease to enjoy the "marked advantage" which that position necessarily gives it over any other union which may seek the employees' adherence.

Essentially the same contention was made against the disestablishment order in the *Newport News* case (308 U. S. 241). In that case, as this Court stated (308 U. S., at 248), it was uncontradicted—

that the company has never objected to its employes joining labor unions; that no discrimination has been practiced against them because of their membership in outside unions; and that neither officials nor superior employes * * * have interfered, or attempted to interfere, or use any influence, in connection with the election of representatives.

This Court declared that although by the time of the circuit court's decision, all management control of the company union had ended, the freedom of the employees (308 U. S., at 250, 251)—

may be obstructed by the existence and recognition by the management of an old plan or organization the original structure or operation of which was not in accordance with the provisions of the law. * * *

* * * We cannot say that, upon the uncontradicted facts, the Board erred in its conclusion that the purpose of the law could not be attained without complete disestablishment of the existing organization which had been dominated and controlled to a greater or less extent by the respondent.³¹ * * *

Closely in point, too, we submit, is the *Falk* case. In that case, the court of appeals, erroneously assuming, as did the court below, that at some point the employees would cease to regard a once company dominated union as the employer's choice, had modified the Board's disestablishment order so as to provide that the employees should be free in a Board-conducted election to select the dominated

³¹ The fact that the organization there had originally been structurally defective is no ground for distinction; as the Second Circuit stated, "* * * that was merely an incident, not a test. The theory on which the Supreme Court went, as we understand it, was that an unaffiliated union, known for long to be favored by the employer, carries over an advantage which necessarily vitiates its standing as exclusive bargaining agent." *Western Union Telegraph Co. v. National Labor Relations Board*, 113 F. (2d) 992, 996.

union as their representative.³² This Court over-
turned the circuit court's modification of the
Board's order because it indicated that "while in
terms disestablished for the time being, [the com-
pany union] was still available for selection by the
employees" (308 U. S. at 462). The Court held
that (p. 461)—

the Board justifiably drew the inference
that this company-created union could not
emancipate itself from habitual subservi-
ence to its creator, and that in order to
insure employees that complete freedom of
choice guaranteed by § 7, Independent must
be completely disestablished and kept off
the ballot.

See, also, the *Heinz* case, 311 U. S. 514, 522, in
which it was unsuccessfully argued that as the
employer had recognized and bargained with the
Union, it should be "equally free to recognize the
Association instead of the Union whenever the
former represents a majority of the employees."

The *Westinghouse* case (112 F. (2d) 657
(C. C. A. 2), affirmed 312 U. S. 660), is also
closely in point. There the employer had an-
nounced in a speech to the old elected representa-
tives that the original plan was to be discontinued,

³² The lower court had ordered that the notices required
by the Board to be posted should recite that the dominated
organization would be disestablished only "until and un-
less . . . [the] employees freely and of their own
choice select" it as representative (106 F. (2d) 454, 456, 457
(C. C. A. 7)).

but failed to make any such disclosure to the employees as a whole. The absence of any such public repudiation of the plan was deemed controlling by the Circuit Court of Appeals. Its opinion states (112 F. (2d), at 660):

* * * the company did not make any effort to make it plain to the employees generally that the "Independent" was not a revision, or amendment, of the "Plan". On the surface it seemed to be such, for it emanated from the old elected representatives, and that alone established an appearance of continuity between the two. * * *

And the courts have frequently sustained Board findings that an inside union which immediately followed an illegal predecessor and appeared to the employees to succeed it, is subject to the infirmities of the old union, despite the absence of substantial fresh overt acts of domination, assistance, or support. See, e. g., *Sperry Gyroscope Company, Inc. v. National Labor Relations Board*, 129 F. (2d) 922 (C. C. A. 2); *Kansas City Power & Light Co. v. National Labor Relations Board*, 111 F. (2d) 340, 346-347 (C. C. A. 8); *National Labor Relations Board v. Swift & Co.*, 116 F. (2d) 143 (C. C. A. 8); *National Labor Relations Board v. Rath Packing Co.*, 123 F. (2d) 684 (C. C. A. 8); *Colorado Fuel & Iron Corp. v. National Labor Relations Board*, 121 F. (2d) 165 (C. C. A. 10); *National Labor Relations Board v.*

Colorado Fuel & Iron Corp., decided June 8, 1942, 10 L. R. R. 553, 555 (C. C. A. 10). The holding of the court below is inconsistent with these decisions.

The cases of *A. E. Staley Manufacturing Co. v. National Labor Relations Board*, 117 F. (2d) 868 (C. C. A. 7), and *E. I. DuPont De Nemours & Co. v. National Labor Relations Board*, 116 F. (2d) 388 (C. C. A. 4), certiorari denied, 313 U. S. 571, cited by the Company in its opposition to the petition for certiorari (p. 9), are not inconsistent with our position here. In each of those cases there were three successive labor organizations, each with a different name and without continuity between the successive organizations. In each, both the first and second organizations had ceased to exist and the employer had notified its employees by printed notice or individual letter to each employee that it would no longer bargain collectively with the second organization (117 F. (2d) at p. 874; 116 F. (2d) at pp. 392-393.³³ In each, the employer lived up to its statement that it would no longer bargain collectively with the second organization. In each case the court held that the em-

³³ In the *DuPont* case, in fact, the employer never thereafter recognized any labor organization (116 F. (2d) at p. 394). In the *Staley* case, a month after dissolution of the second organization and the notice to the employees that the employer would no longer recognize it, the employer recognized a third unrelated labor organization (117 F. (2d) at pp. 874-875).

ployer had disestablished the dominated labor organization and that the employees were therefore entirely free of company influence when they formed the third organization (117 F. (2d) at p. 378; 116 F. (2d) at pp. 396-397).³⁴ In the instant case there was no disestablishment.

In the present case the Company advised its employees of their rights under the Act and stated that it did not care what union they joined (*supra*, pp. 27-28). But the Association continued to be recognized as bargaining representative, and the Company never notified the workers that it was withdrawing recognition from or discontinuing the Association. That such a definite repudiation is necessary in order to dissipate the effect of an employer's prior and long-continued support is clear under the cases cited above, including those relied on by the Company.

2. *The holding of the court below also violated the direct language of the Act*

The holding of the court below that the validity of the Board's findings and order turned upon whether there was evidence that "at the time of the complaint and hearing" the Association was dom-

³⁴ *Magnolia Petroleum Company v. National Labor Relations Board*, 112 F. (2d) 545 (C. C. A. 5), and *Humble Oil & Refining Co. v. National Labor Relations Board*, 113 F. (2d) 85 (C. C. A. 5), also relied upon by respondents below, fall into the same category as the *Staley* and *DuPont* cases; in each there was a definite and public repudiation of the unlawful association as a bargaining agency.

inated by the Company (R. 209), is also directly in conflict with the express language of the Act. Section 10 (c) empowers the Board to enter an order to cease and desist and to take appropriate affirmative action if it "shall be of the opinion that any person * * * *has engaged in* or is engaging in" any unfair labor practice (italics added). The holding of the court below deprives the Board of power to do so unless the violations are found to continue at the time of the complaint and hearing. The Board is entitled to issue a cease and desist order if it finds that any unfair labor practices have in the past been committed. *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 230; *Federal Trade Commission v. Goodyear Tire & Rubber Co.*, 304 U. S. 257, 260, and cases there cited.

The power to order affirmative action likewise is not dependent upon the continuance of violation of the Act at the time of the Board's order, although it does depend upon the continued existence of effects of the prior unfair labor practices in such a form as to constitute an obstacle to the full enjoyment by employees of their rights under the Act. This Court has repeatedly held that the Board could find that the continued recognition of a labor organization which had been company sponsored was such an obstacle and must be removed (cases cited, pp. 34, 46-50, *supra*).

CONCLUSION

It is respectfully submitted that the judgments of the court below should be reversed and the causes remanded with directions to enforce the Board's order in full.

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FEBRUARY 1943.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Title 29, Sec. 151, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

* * *
SEC. 10 * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall

state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

(f) * * * the findings of the Board as to the facts, if supported by evidence, shall * * * be conclusive.

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CHARLES ELLIOTT

Nos. 460-461

IN THE
Supreme Court of the United States
OCTOBER TERM, 1942

NATIONAL LABOR RELATIONS BOARD,
Petitioner

v.

SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY

NATIONAL LABOR RELATIONS BOARD,
Petitioner

v.

SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES

**BRIEF OF SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY IN
OPPOSITION TO THE PETITION
FOR CERTIORARI**

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To one familiar with the mass of evidence in this case, it is apparent that the petition for certiorari (1) does not completely state the issue in the case; (2) does not correctly state the ruling of the Circuit Court of Appeals; and (3) does not adequately state the undisputed facts in the case.

Also, when the legal rulings are accurately defined, it is clear that the case does not turn on any new or difficult question of law and does not present any matter that deserves review because of its public importance in the administration of the Act, or because it is in conflict with decisions of this Court or other Circuit Courts of Appeals.

To make these statements clear, some consideration of the evidence in the case is necessary. The evidence is lengthy, but with the exception of two trivial incidents is free from conflict. This is not a case where on conflicting testimony the Board has drawn certain conclusions of fact which must be binding on the reviewing court. On the contrary, it is a case where the evidence is free from dispute, but where the Board reached conclusions which are not supported by the evidence nor based on reasonable inference drawn from the evidence.

The questions are wholly factual. The question is whether the evidence taken as a whole (as distinguished from isolated facts, the meaning of which is changed or modified by the whole record) presents a case where the Board's finding is supported by "substantial evidence." Admittedly, the statute makes it mandatory that the Circuit Court of Appeals examine the evidence as a whole to determine this question. The legal test for making this determination is now settled beyond dispute. It is the same test which a court applies in reviewing the sufficiency of evidence to require the submission of a case to the verdict of a trial jury.¹ This is exactly the legal test applied by the Circuit Court of Appeals in this case.²

¹Substantial evidence to support a finding of the Board "must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury." *National Labor Relations Board v. Columbian Enameling and Stamping Company* (1939), 306 U. S. 292, 300.

²"It must rest upon the determination by this court, under the settled rules which govern jury verdicts; whether the undisputed facts are in law capable of fairly giving rise to the fact inferences the Board has drawn, * * *." (R. 205)

Therefore, the only question involved is whether the Court, after a careful analysis and study of the evidence, was correct in holding that there was no substantial evidence to sustain the Board's conclusions.

We believe all of this will be clearer from the following discussion:

I.

THE PETITION FOR CERTIORARI DOES NOT COMPLETELY STATE THE ISSUE IN THE CASE.

On page 12 of the petition opposing counsel state:

"1. The court below correctly stated the Board's position to be (R. 207-208)—

'that the Association was and remained tainted and could not represent the employees because there had been no sufficiently clean break away from the old, to establish a new Association, by a complete dissolution and abandonment of the old and a fresh start from scratch.' "

By beginning the quotation from the opinion without a capital letter, the petition indicates to this Court that only a part of a sentence is there quoted.³ By looking only to the part of the sentence quoted, it would appear that an issue was here involved as to whether it was within the power of the National Labor Relations Board to find that complete disestablishment was essential in dealing with a labor organization which was the same organization or an outgrowth of an organization which had been company dominated. Plainly, this is within the power

³This indication that only a part of a sentence is set out arises from counsel's scrupulous care to deal fairly with the Court. Obviously they did not feel, as we do, that the part of the sentence omitted was of critical importance.

of the Board under many circumstances. The decisions from this Court, cited by opposing counsel on page 13 of their petition, undoubtedly establish this.

The present case presents a substantially different question, which is made clear when the opening words of this sentence from which counsel quote are also before the Court. With these additional words the sentence reads thus:

*"Notwithstanding these undisputed facts, the Board's position * * * is simply this, that the Association was and remained tainted" etc.*
(Italics added.)

"These undisputed facts" to which the Court refers are set out in its opinion immediately preceding this sentence, in part, as follows:

"No case has been cited to us, we have found none, where the record is so completely lacking in any evidence of anti-union activities, anti-union bias on the part of the employer; none where it shows such scrupulous recognition, such earnest efforts to ascertain and abide by the obligations imposed by the act, and such complete avoidance of any act or word from which domination or interference by the employer could be inferred; none in which there was such complete absence of even an atmosphere of seated purpose or preference for one labor organization over the other, or for any; none in which the evidence more positively and beyond question showed that the employees had freely and without any interference, coercion, restraint or even persuasion, on the part of the employer, selected their bargaining representative. There is no claim that the company has ever discriminated against any employee or organization of employees on account of any labor activities or on account of an employee joining or not joining any labor organization. There is no claim that it or any of its supervisory

personnel has in any wise intimidated, coerced or used force or threats thereof, or offered any inducements to any of its employees for or on account of any of its employees' labor organizational activities, or on account of any of them joining or not joining any labor organization. Indeed, during the trial of the case when the company's counsel was undertaking affirmatively to prove that nothing of the kind had ever occurred, the attorney for the Board made the following statement: 'Mr. Examiner, I object to all of these things. The complaint here is clear and charges one thing, that is, domination of the Association and I have not charged and do not now charge and will not charge that the company has discriminated against any employee for union membership or that it has violated any section of the Act other than 8(1) and 8(2).' The proof makes it completely clear; that since the passage of the Act, the company and its employees have sedulously endeavored to conform to it, and that except in respect of one or two acts of minor officials, which were promptly repudiated, there has been no departure by the company or any of its employees from this attitude; that the old Association has been completely superseded by the present one, formed under a new constitution; that the company, because of the effort at organization of the rival union, declined to recognize the Association further without an election; and that there was an election with an overwhelming number of the employees, more than 4/5ths of the whole, voting for the Association." (R. 207)

The issue, therefore, was not whether the Board might under some circumstances conclude that disestablishment was the only way to correct previous company interference. The issue was much more concretely related to the immediate case. It was whether under the undisputed facts *in this case* a

finding that disestablishment was necessary to remove the effect of company influence before the date of the passage of the Act was supported by "substantial evidence."

II.

THE PETITION DOES NOT CORRECTLY STATE THE RULING OF THE CIRCUIT COURT OF APPEALS. NO NEW OR DIFFICULT LAW QUESTION AND NO CONFLICT OF DECISIONS ARE HERE INVOLVED.

On page 16 of the petition it is stated that the court below held "that the unlawful conduct of the employer must be continuing at the time of the complaint and hearing." With deference to opposing counsel, we insist that this is entirely erroneous and that the Court of Appeals held nothing of the kind.

The question actually involved was of a different character. It was whether upon the facts in this case the effect of the Company's support of the old association, years before the hearing, had been dissipated by what had been done since then and by the lapse of time. The Court held that it had been dissipated and that there was no substantial evidence to the contrary. As a matter of fact, that Court held that the evidence showed without conflict that there had been no unlawful conduct on the part of the employer and no violation of the Act.

Six years before the hearing, before the Act was passed, the Company contributed to the support of the association as it then existed. This contribution was immediately stopped with the passage of the Act, and the Company adopted the measures hereinafter stated to insure that all of its supervisory personnel rigidly adhered to the obligations imposed by the Act. The support of the association before the Act was not a violation of law. Hence the evidence

in this case does not show "unfair labor practices" by the Company at any time, since that term as here used means a violation of the Act.

What the Circuit Court of Appeals held—and all that it held in this connection—was that, upon the record as a whole, proof that the Company had supported the association before the Act did not justify a finding by the Board that six years thereafter, at the time of the hearing, the Company interfered with and dominated the present Association, or that the effect of the early acts of the Company still persisted.

It is true that the Circuit Court of Appeals refused to be bound by a "formula" which would mean, as applied to the facts of this case, that contributions to an association before the Act, would justify the Board in ordering disestablishment of an association in a reorganized form six years after the Act, without any regard to what had happened in the interim. No such formula in such sweeping form has been sanctioned by this Court.* The cases collected on page 13 of the petition, which are cited as approving such a "test," do not go this far. They go only to the extent of holding that prior interference or domination will justify the Board in inferring that such domination continues, unless that inference is rebutted by proof that employees have been adequately advised of their rights and the employer's neutrality. Such proof is uncontradicted in the present case, and in addition there is the further fact that after the minds of the employees had been

*This Court has recently in two cases expressed its disapproval of "those who seek for mathematical or rigid formulas" in dealing with practical problems growing out of varying states of fact. *Kirschbaum v. Walling* (decided June 1, 1942), 86 L. Ed. Advance Opinions, 1054; *Walling v. Belo Corp.* (decided June 8, 1942), 86 L. Ed. Advance Opinions, 1166.

thus adequately disabused of any lingering influence, they again freely expressed their choice of the Association as their representative for collective bargaining.

Without attempting to review all of the cases cited in the petition, we refer to *Westinghouse Electric & Manufacturing Company v. National Labor Relations Board*, 312 U. S. 660, as typical, because of the statement of opposing counsel on page 15 of the petition that the "Westinghouse case, in particular, is closely in point." The case illustrates the correctness of the statement made above. The facts are not shown in the opinion of this Court, so reference is made to the facts as reported in the Circuit Court of Appeals' decision, 112 F. (2d) 657, CCA 2. The decision of that Court turned on the fact that while the company made a statement to "representatives" of its neutrality, "the company did not seek to broadcast it or its equivalent in any way to the employees—about 2,500 in all." The failure to make this statement of neutrality to employees appears to be the crucial point in the decision. In referring to the decision of this Court in the *Newport News* case, 308 U. S. 241, on which opposing counsel also rely, the Circuit Court of Appeals says that the basis of that case is found in the fact that "the employees at large had not been advised that the company was wholly indifferent whether they joined the new union." In the present case the Company effectively notified the employees of its neutrality and "hands-off" policy, not merely once, but several times. It so notified them in 1935 by the instructions of Mr. Warren which, it is stipulated, were communicated "to the general body of employees," and by a series of notices and bulletins over a period of years.

It is believed that this same principle will be found to run through the cases on which opposing counsel rely, namely, that while an inference may arise from prior interference or domination, it is a rebuttable inference, which may be completely rebutted by proof, that the company's neutrality had been adequately brought to the attention of the entire body of employees.

The decisions of the Circuit Courts of Appeals have so interpreted the decisions of this Court. For example, in *A. E. Staley Manufacturing Company v. National Labor Relations Board*, 117 F. (2d) 868, 878, CCA 7, the Court, after recognizing that an inference of continued domination might be drawn from previous interference, adds:

"We do not think such a theory can prevail in face of direct and uncontradicted evidence that petitioner's employees understood that they were free in theory and in fact to join any labor organization they desired."

See also the decision of Judge Learned Hand in the Second Circuit, in *Western Union Telegraph Company v. National Labor Relations Board*, 113 F. (2d) 992, and the decision of the Fourth Circuit in *E. I. du Pont de Nemours & Co. v. National Labor Relations Board*, 116 F. (2d) 388; certiorari denied, 313 U. S. 571.

III.

SUMMARY OF ADDITIONAL FACTS.

Prior to the adoption of the Act there had existed an association of the employees of the Company, and the Company had contributed to the support of that organization. It has never seemed to us of controlling importance to determine whether the present

Association should, from the standpoint of technical law, be considered the old organization or a new employee organization. To some extent it could probably be considered at least an outgrowth of the old organization. This we do not contest. The entirely changed form of organization and functioning justifies the statement of the Circuit Court of Appeals that regardless of its historical connection, "the old Association has been completely superseded by the present one, formed under a new constitution." (R. 207)

The question in the present case is whether the historical connection, and the relation of the Company to the association existing before the Act, are such as to justify the inference of the Board that six years thereafter the Company dominated the then existing employee organization. If we grant that the historical connection could under the decisions cited by the Board justify a rebuttable inference of continued domination (though no case has ever sustained the carrying forward of such inference for any such period of time), it was here completely rebutted by undisputed proof. It is to these facts that the statement here to be made is addressed.

Relation of Company to Association Before the Passage of the Act

Before the National Labor Relations Act was adopted the Company contributed to the support of the association then existing. The organization of the association in other respects was, however, completely independent of management. Management had no right to appoint any of its officers or governing boards. (R. 170) It had no veto power over its actions and no other control or influence except its

power to withdraw its financial support. There is no proof in the record that this influence, such as it was, was ever exercised over the association's action.

The Company's Labor Record

"The employer's attitude towards unions is relevant." *National Labor Relations Board v. Link-Belt Company*, 311 U. S. 584.

There is no proof in the record of any hostility on the part of the Company towards organized labor. This includes national labor organizations such as the A. F. of L., to which the I. B. E. W. belongs. The Board does not charge, and made no effort to prove, that the Company had any anti-union record. There is no proof that the support it gave the association before the adoption of the Act was for the purpose of using that association to keep out national unions, nor is there any suggestion that it was so used either before or after the passage of the Act.

The proof, however, goes further than being merely negative in this respect. It shows a definite attitude of neutrality and impartiality on the part of the Company, known to its employees, actually enforced by its management, and to a large extent stipulated by the counsel for the Board.

Care Exercised to Obey the Act'

In July, 1935, the National Labor Relations Act became the law of the land. On July 16, 1935

¹References given as "(App.)" followed by a letter, refer to the Appendix to the Company's brief in the Circuit Court of Appeals, which has been filed with this Court under stipulation. References to "(Tr.)" are to the official stenographic transcript of testimony in the case, which under the stipulation may be referred to. "(Bd. Exh.)" refers to an exhibit of the Board.

(eleven days after the effective date of the Act), Mr. J. E. Warren, then the Company's Vice President in charge of operations, now its President, called a meeting in Atlanta of all the principal officials of the Company, both general and of the nine states in which the Company operates, for the purpose of announcing and giving directions on the Company's policy with respect to the Act. Also present at this conference were the chief staff assistants of the general departmental heads, as well as the then President and General Secretary of the then existing employee organization. (App. M.)

Mr. Warren at this meeting read extensively from the National Labor Relations Act, laying especial emphasis on Sections 7 and 8, and explained to those in attendance the rights of employees under these provisions as well as the duties and obligations of management thereunder. He further stated in substance that the employees had a right to do whatever they wished about labor organizations; that the employees had a right to select their own representatives and their own unions or organizations, and that management must exercise an absolute "hands-off" policy and in no wise advise with the employees on such matters, and under no condition indicate what form of organization management preferred, if any; and that it was and would be the policy of the Company to observe the Act to the letter and spirit. (App. M; App. K; App. L.)

Mr. Warren also directed the officers of the Company and the state officials to call in their subordinates with supervisory power, and fully instruct them as to the rights of employees and the obligation of the Company under the Act, and the Company's policy of strict observance of and compliance

with both the letter and the spirit of the Act. He instructed those present promptly to communicate the Company's policy to all such supervisory employees *and to inform the entire employee body* of the Company's policy as announced in the meeting, and of their rights under the Act, and the Company's policy strictly to recognize and respect all of their rights, as well as the Company's complete neutrality with regard to all labor organizations or activities. (App. M; App. K.)

These directions of Mr. Warren were promptly carried out, and his statements, as hereinbefore recited, as to the rights of employees under the Act and of the duty of management thereunder, and of the policy to obey it strictly and to maintain neutrality in all labor organizational matters, were promptly and fully transmitted to all supervisory personnel *and to the entire employee body of the Company.*

The following stipulation is a part of the record:

"It is stipulated that in July, 1935, the respondent had division managers and superintendents in various departments of the divisions, and district managers and superintendents in various departments of the districts, to the aggregate number of in excess of 120.

It is stipulated that if these men were called as witnesses they would testify that promptly after Mr. Warren's meeting of July 16, 1935, the substance of Mr. Warren's statement as to the Wagner Act, and as to the policy of the Company with respect to that Act as shown in Mr. Warren's testimony in this record, was by such division and district officers communicated to their subordinates *and to the general body of employees of the Company.*

It is further stipulated that they would also testify that so far as each one's individual information went the policy so stated had not been departed from.

It is stipulated that the record in this case may be considered as if such persons had so testified herein and with the same effect as if they had so testified." (Tr. 575-576. *Italics added.*)

The policy of the Company with reference to the Act and to the rights of the employees thereunder, and its obligations thereunder, has not been changed in any way since the pronouncement of Mr. Warren at the July, 1935, conference, and has been carried out in good faith. (App. M; App. K; App. N; App. I.) As to this there is no conflict whatever in the evidence.

The Company has never discriminated against any employee or organization of employees on account of any labor activities or on account of an employee joining or not joining any labor organization; nor has it or any of its supervisory personnel in anywise intimidated, coerced, or used force or threat thereof, or offered any inducements to any of its employees for or on account of any of its employees' labor organizational activities, or on account of any of its employees joining or not joining any labor organization (App. K.); nor, except in one isolated instance, at Shreveport, Louisiana (which was promptly corrected), have any of its supervisory personnel undertaken to influence any of the employees with respect thereto.*

*This Shreveport incident was not only promptly corrected by management and all supervisors there given instructions to be neutral, but was in itself completely trivial. It involved one exchange out of more than 900, and 4 em-

The Board, however, sought to nullify the effect of everything the Company did to obey the Act because of three memorandums issued from time to time under the title of "Wagner Bill Interpretations." These are found as Appendices B, C, and D to the Company's brief in the Circuit Court of Appeals, which, under stipulation, may be referred to here. Without full discussion we request that they be examined and allowed to speak for themselves. There is not a word in any one of them remotely suggesting the things which the Board has sought to deduce from them. They merely evidence an earnest and sincere effort to ascertain what the Act required, and to see that it was complied with. They are in line with the position taken by the Company upon the adoption of the Act—that so far as this Company was concerned it must be obeyed.

In the memorandum issued in April, 1937, the following, among other principles, were stated "to be observed by this Company in dealing with the Southern Association of Bell Telephone employees":

"The Company cannot engage in any activity designed to induce or prevent its employees from joining this or any other labor organization."

"The provisions of this Act make it illegal for an employer to dominate or interfere with the formation or administration of any labor organization, and the management of this Company should conscientiously observe these provisions." (App. D.)

ployees out of a total of over 23,000. It is significant that *it is the only instance* in which the Board raises any question of this kind. There was no reason for the corrective action of the management at Shreveport to be "made known to the general body of employees" (Petition, p. 9). The incident did not affect the general body of employees and was not known to them.

It is true that the memorandums show that from the adoption of the Act to the early part of 1937 the Company still believed that it was legal for the Association to meet on Company premises; construed the provision in the statute that salaries of employee representatives could be paid while conferring with management as including also the time devoted to preparing for such conferences and to carrying out arrangements so agreed upon; and permitted the Association's mail to go through inter-office mail facilities. All of this was ended in the early part of 1937, after some decisions of the Board had indicated some question about such practices. There has been no discrimination in this respect. No other labor organization has been refused such privileges (Tr. 650-651) and in fact during the period involved no competing labor organization existed.

From all of the foregoing a finding was demanded that this Company has taken proper measures to obey the Act; to advise its employees fully of their rights under it; to respect those rights; and to maintain an attitude of complete neutrality; and that all of these things were fully known to the employee body. The record is, in fact, even stronger than the condensed statement here presented.

IV.

EMPLOYEES' FREE SELECTION OF ASSOCIATION.

After the Company's declaration of neutrality of 1935, 83% of the employees, free of any influence from the Company, signed membership cards in the Association. (Bd. Exh. 16, p. 11; Tr. 423.)

Thereafter, an increasing number of the employees each year renewed their membership in the

Association, thereby again freely selecting it as their bargaining agency.

In the early part of 1941, but before the complaint herein was filed, and after the Association had given the Company notice that it had ceased to act as the bargaining agent, the Association held a referendum, conducted under the most careful circumstances, and an overwhelming majority again designated the Association as their bargaining agent.

The Board's contention about the Company's use of the word "noted," in reply to the notice of the Association that it would not act as bargaining agent, is not impressive. The Company accepted the fact that the Association would cease to represent the employees until and unless they obtained new authority. The employees were advised of this. The Company posted notices on all bulletin boards of its complete neutrality,¹ then the vote was taken. No play on words can destroy the effect of what happened. The Association was disestablished and the employees were so advised. It received new authority by an impressive vote.

V.

THE WRIT SHOULD NOT BE GRANTED.

It has long been settled that this Court, in the exercise of its discretion to grant or refuse a review by certiorari, will not be guided by a narrow consideration of technical questions in the immediate case, nor, indeed, even by the rights of the immediate litigants, but will exercise a broad discretion, always considering the public interest. We have pointed

¹This notice posted at 2,173 places (App. F; App. M) is in sweeping and comprehensive terms. The Board has found nothing to criticize in the notice. It is printed as Exhibit A to the Company's amended answer. (R. 41-43)

out that no important questions of law which need to be settled in the public interest are involved in this case. It is also clear that the decision of the Circuit Court of Appeals does not frustrate the purpose of the National Labor Relations Act to permit employees freely to choose their own form of organization. On the contrary, a fair consideration of the evidence demonstrates that this purpose of the Act is in fact preserved by the decision. These considerations alone should be sufficient to cause the Court to deny the petition.

These considerations, however, do not stand alone. There are affirmative reasons why this writ should be denied. Every effort of the Government is now being exercised to preserve industrial peace and to prevent unnecessary and useless controversy. These ends, of course, are not to be accomplished by denying to labor its rights, or its real freedom of organization; but where it is clear that there has in reality been no such denial, litigation which uselessly agitates such matters should not be prolonged. Without elaboration, it is proper for us to point out that this is especially true with respect to a communication system serving nine southeastern states and maintaining telephone communications essential to the country's war effort which is concentrated in that section.*

Respectfully submitted,

MARION SMITH

S. B. NAFF

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*Attorneys for Southern Bell
Telephone and Telegraph Company.*

Atlanta, Georgia
October, 1942

FILE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1942

Nos. 460-461

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

SOUTHERN ASSOCIATION OF BELL
TELEPHONE EMPLOYEES

BRIEF OF SOUTHERN ASSOCIATION OF BELL
TELEPHONE EMPLOYEES IN OPPOSITION TO
PETITION FOR CERTIORARI.

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BRIEF OF SOUTHERN ASSOCIATION OF BELL
TELEPHONE EMPLOYEES IN OPPOSITION TO
PETITION FOR CERTIORARI.

In this brief the Southern Association of Bell Telephone Employees will be referred to as the "Association" and Southern Bell Telephone and Telegraph Company, will be referred to as the "Company".

The Association respectfully urges that the petition for certiorari should be denied.

The vital practical question involved is whether the Association which has been chosen by at least 85% of the eligible employees of the Company as the bargaining representative of the employees in their relations with the Company, should be disestablished. The employees represented by the Association, numbering some 20,000 or more, are, from a practical standpoint, most vitally concerned. It is the contention of the Association, as the representative of these employees, that for the Association to be dissolved and the employees to be deprived of the right to be represented by it, would be to frustrate and set aside the wishes of at least 85% of all of the eligible employees of the Company to be represented for collective bargaining by an organization of their own choosing; that there is no substantial evidence in the record to support the conclusion that the employees, in exercising this right of self-organization and the selection of the Association as their bargaining agent, were restrained or coerced by the Company. The evidence in the record, without conflict, shows that at the time the complaint was filed, and at the time of the hearing under the complaint, the Association was, and for several years had been, completely free of any support, financial or otherwise, from the Company, and was, and had been, functioning as the bargaining agency of the employees throughout the entire territory served by the Company in the nine Southeastern States.

The only theory of the Board for the finding to the effect that the Association was company dom-

inated, or company influenced, was the fact that the Association was, in a sense, the outgrowth of one which existed prior to the passage of the National Labor Relations Act, and which, prior to the passage of the Act, was supported financially by the Company. All of the substantial evidence in the case shows, without serious conflict or dispute, that almost immediately after the Act became effective, the employees undertook to exercise the rights guaranteed them by the Act, and to form an organization, through which to bargain collectively and to engage in concerted activities with respect to their relations with the Company. In the last analysis, the question presented in this case is whether the historical connection between the old Association of the same name, which existed prior to the passage of the Act, and the reorganized Association, which came into existence shortly after its passage, is alone sufficient to justify a finding that the present Association is company dominated, and this in spite of the undisputed evidence to the contrary.

HISTORICAL CONNECTION

Prior to the passage of the Act, which became effective July, 1935, there was an Association of the same name as the present one. This original Association was organized in 1919. It was supported financially by the Company. It had no regular roll of membership. Following the effective date of the Act, and during the Fall and early Winter of 1935, the employees of the Company, through a committee chosen by them for that purpose, met and prepared an entirely new constitution for an Association of the same name, but

substantially, and in some respects radically, different from the old organization (C.A. 24 to 29; 82 to 84).¹ In the preparation of this proposed new constitution, which was to be submitted to the employees for ratification or rejection, the committee did not have the services of an attorney, but the members of the committee themselves prepared it without legal advice or assistance (B.A. 60 and C.A. 25). In its preparation, Askew, formerly President of the old Association, was not allowed to participate. Askew had advocated the retention of the old Association with merely a change to eliminate the financial support which the Company had formerly contributed to the old Association; but the committee of the employees rejected Askew's proposals and declined to allow him to participate in the preparation of the new constitution (C.A. 29-30).

In the preparation of the proposed new constitution no representative of the Company was allowed to participate or make suggestions (C.A. 31). The proposed new constitution was submitted to the employees, and it was ratified to become effective as of February 1, 1936.

Within a few days after the effective date of the Act, and prior to the meetings of the committee of the employees to draft a new constitution, Warren, then Vice President of the Company in charge of Operations, now the President of the Company, called a meeting of all of the principal

¹ "C.A." refers to the Appendix to the Company's brief in the Court below; "B.A." refers to the Appendix to the Board's brief in the Court below; "R" refers to the printed Record; "Tr." refers to the transcript of the record filed in the Court below, but which was not printed.

officials of the Company, and at this meeting explained the terms of the Act and gave instructions that the Act was to be strictly complied with. He also gave instructions that, through all supervisory employees of the Company, the employees were to be informed of the terms of the Act and advised that it would be the Company's policy to strictly comply with its provisions and to respect the rights of the employees. It was stipuated that these instructions were carried out (Tr. 575-576; R. 172). Thus, the employees had been fully advised of their rights under the Act before this new constitution was prepared and adopted.

In the petition for certiorari (pp. 4 and 5), mention is made of the fact that prior to the passage of the Act, and in anticipation thereof, officers of the then existing Association were permitted by the Company to make a company-wide canvass of the employees for the purpose of soliciting and raising funds with which the Association, or a successor, could operate after the Act should become effective; that the Company permitted this canvass to be made on company time and with the use of company cars, and at the expense of the Company; that this canvass resulted in raising a fund of approximately \$5,000, a part of which was used in defraying the expenses of submitting the proposed new constitution for ratification. We respectfully call attention to the fact that the new, or reorganized, Association refunded every cent of these contributions to those who had made them (C.A. 34).

Pending the ratification of the new constitution, the committee of employees, realizing that there was no organization legally entitled to function in

the interim, proposed a temporary plan for meeting the emergency pending "the adoption of the revised constitution". This plan, in substance, was that a resolution (known as "Resolution No. 1") was submitted to and adopted by the employees, through the locals of the old Association. The Resolution provided for a temporary committee to take steps toward raising funds by the collection of dues and out of these funds to defray the expenses incident to the reorganization of the Association.²

During the period between the effective date of the Act and February 1, 1936, when the new constitution became effective, there was no bargaining carried on by the Association with the Company. A proposed joint agreement between the management and the Association as to procedure was prepared and signed, and this was submitted along with the new constitution for ratification or rejection by the employees to become effective, if ratified, on February 1, 1936 (C.A. 27; B.A. 49 to 51).

From the effective date of the new constitution, February 1, 1936, down to the present time, the reorganized Association has functioned as the bargaining representative of the employees with the exception of a period during the early part of the year 1941 when the Association, pending a vote of its members, voluntarily relinquished its right to act as the representative of the employees. This will be referred to in more detail hereinafter.

² This resolution was introduced in evidence as "Association's Exhibit 7." It does not appear in the portions of the evidence which have been printed, but is in the record in the court below.

Since the adoption of the new constitution, the Association has been financed entirely with dues collected from its members. The Company has not furnished any direct financial assistance. For a short period in the beginning, the members of the Association were permitted to meet on the Company's premises without paying rent therefor. And for a short period at the beginning, the Company paid the time of employees who were acting as representatives of the Association, while bargaining with the Management, and for such time before and after such actual bargaining while these Association representatives were engaged in discussing and considering matters which were involved in bargaining conferences. All such indirect financial assistance from the Company, if it amounted to such, was entirely terminated in the early part of 1937, and there is no claim or contention that there has been any since then. For a short while after the adoption of the new constitution the Association rented from the Company a small office space which was occupied by the secretary of the Association. The evidence is undisputed that the Association paid a fair rental for this space, but the Association voluntarily terminated this arrangement and moved its offices to another building.

It is conceded that "all forms of financial support and assistance" by the Company were terminated by the Spring of 1937 (petition for certiorari, p. 8). The Association had functioned as the chosen representative of the employees without any intimation or suggestion that it was company dominated until November or December, 1940. The first intimation that it had that there

was, or would be, any claim to the contrary was when there came to the attention of the officers of the Association the fact that the International Brotherhood of Electrical Workers, affiliated with the A. F. of L., had made an unsuccessful effort to organize the employees in one department in the Shreveport, La., exchange of the Company, and had complained to the Regional Director of the Board at New Orleans, La., that the Company was dominating the Association and contributing financial and other support thereto. Upon receipt of this information, the General Assembly of the Association was called together and met in Atlanta, Georgia, in January, 1941. Following this meeting of the General Assembly, the General Executive Board of the Association met and determined to take action, pursuant to directions given it by the General Assembly, to see that the members of the Association were fully and adequately advised of the threatened charges and of their rights under the Act, and to give them an opportunity to continue, or discontinue, membership in the Association, and to express their wishes as to continuing, or not continuing, the Association as their bargaining representative. Accordingly, various bulletins and circular letters were sent out throughout the territory bringing these matters to the attention of the members of the Association; and on February 10, 1941, the General Executive Board of the Association notified the Company that because of the fact that the threatened charges "clouds this Association's right to represent the employees of the Company and that under such circumstances the best interests of the employees may not adequately be served, the Asso-

ciation will not undertake to act as their collective bargaining agent pending a canvass of its membership by signed ballot" (Respondent's Exhibit 4). After having thus severed bargaining relations between the Association and the Company, the Association arranged to take a vote of its membership. This was done by printed ballots sent out to all members of the Association, to be returned by the members direct to a firm of certified public accountants, which firm was to, and did, consolidate the ballots and certify the results. The ballots contained the following two questions, each of which was to be answered by the member and the ballot then to be signed and returned in the stamped and addressed envelope furnished for that purpose:

"Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Company?

"Do you desire to continue your membership in Southern Association of Bell Telephone Employees?"

The result of this canvass was that more than 15,000 members voted in favor of retaining the Association as their bargaining representative (R. 77 to 79).

In the meantime, after the Association had notified the Company that this canvass of the membership of the Association was to be made, and that pending the canvass of the Association would not undertake to act as the bargaining representative of the employees, the Company caused to be posted in all of its exchanges throughout the territory, a

bulletin setting out Sections 7 and 8 of the Act, and stated:

"The Company Recognizes Its Employees' Right to Join, Form or Affiliate With Any Labor Organization of Their Own Choice and Freely to Exercise All Rights Secured Them by This Act.

"The Company Guarantees Its Strict Compliance With all the Provisions of This Act and That No Employee Will be Discriminated Against or Suffer Any Other Penalty Because of His or Her Exercise of Any Right Secured by This Act.

"The Company Is Not Interested in Whether Its Employees Join or Do Not Join Any Labor Organization."

These notices were posted on 2173 bulletin boards, and it was some days thereafter that the ballots were sent out to the members of the Association.

It is the contention of the Association that, in practical effect, the Association voluntarily disbanded itself pending the vote of its members, who constituted at least 85% of all of the eligible employees of the Company; and it is the contention of the Association that the result of the vote thus taken was a clear and emphatic expression of the choice of the employees, free from any Company influence whatever.

The implication that the employees could not thus exercise their rights guaranteed by the Act because of some possible vague presumption to the effect that they were under coercion, is without any support whatever in the evidence. The Act

itself contains no fixed and inflexible rule or formula as to the method by which employees are to express their choice of a bargaining representative. As is well said in the opinion of the court below:

“* * It nowhere provides, and there is no warrant in it for the view, that preference by employees for and their selection of an unaffiliated as against a nationally affiliated organization, raises any presumption that this preference was coerced or purchased by the employer. Indeed the statute goes on a presumption exactly the contrary of this, that employees have the intelligence and character requisite for self-organization either by joining or assisting a labor organization, or forming one of their own. * *”

Evidence is wholly lacking in this case to the effect that there had ever been any hostility on the part of the Company towards labor unions, either inside or outside unions, or that there had ever been any effort on the part of the Company to favor one union over another, or any acts or conduct by it tending to intimidate or coerce its employees with respect to union membership. The record in this case clearly distinguishes it from such cases as *National Labor Relations Board vs. Link-Belt Co.*, 311 U. S. 584, and other similar cases decided by this Court.

It is respectfully submitted that this case is unique. There has been no dissatisfaction on the part of any of the employees so far as their representation by their chosen bargaining agency is concerned, and there had been no hint or sugges-

tion of any improper relations between the Association and the Company until the organizers of an outside union made an unsuccessful effort to organize a few of the employees in one of the exchanges. The employees represented by this Association feel, and respectfully urge, that if the Company or any of its officials or supervisory employees were guilty of any improper or unfair labor practice when this effort was made by these organizers, the sins of the Company should not be visited upon the employees through their chosen representative, and certainly not to the extent of a death sentence.

As was said by the court below:

“* * The sole effect of the enforcement of such an order at this time and under the circumstances now confronting this country, would be to throw the Company and the employees generally into a state of turmoil and confusion incident to a general organizational campaign. For the Court upon this evidence at this time and under these circumstances, to decree its enforcement would be completely contrary to the policy of the Labor Relations Act as well as to public policy generally.”

It is respectfully prayed that the petition for certiorari be denied.

✓ FRANK A. HOOPER, JR.,
✓ JAMES A. BRANCH,

*Attorneys for Southern Association
of Bell Telephone Employees.*

Atlanta, Georgia.

FILE COPY

Nos. 460 - 461

IN THE
Supreme Court of the United States
OCTOBER TERM, 1942

NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY

NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES

WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1942

Nos. 460 - 461

NATIONAL LABOR RELATIONS BOARD,
Petitioner

v.

SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY

NATIONAL LABOR RELATIONS BOARD,
Petitioner

v.

SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES

**BRIEF OF SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY**

OPINIONS BELOW

The opinion of the Circuit Court of Appeals which is here being reviewed is reported in 129 F. (2d) 410. The opinion and order of the National Labor Relations Board is reported in 35 N. L. R. B. 621.

JURISDICTION

The Board invoked the jurisdiction of this Court under Section 240 of the Judicial Code, as amended (U. S. C., Title 28, Section 347), and under Section 10 (e) and (f) of the National Labor Relations Act.

STATEMENT

The Statement of the case and the review of the evidence contained in the brief for the Board omit essential facts and are otherwise inadequate. A further statement is necessary before the issues can be properly discussed.

This respondent is one of twenty-four associated companies which, with the American Telephone and Telegraph Company, comprise what is known as the Bell System and furnish a nation-wide local and long distance telephone service. This Company furnishes such service in nine southeastern states. As of March 1, 1941, it served by direct connection approximately 1,375,000 telephone subscribers, with a total employee personnel of about 23,000. Its service is essential in the highest degree to the war activities of the nation. (R. 265-268)

The respondent Southern Association of Bell Telephone Employees (hereinafter called the Association) is a labor organization, comprising in its membership a large majority of the employees of the Company. (R. 257, 266, 221) It is one of a group of large independent unions of employees of the Bell System companies. It is organized into locals and divisions throughout the Company's territory and a central organization, and functions through local chairmen, various committees and officers, and a governing board of thirty-five members, known as the General Assembly, which meets annually. (Board's Exhibits 15, 30, 31, 32 and 33) A Gen-

eral Executive Board was created by the new constitution of 1935 (effective February 1, 1936) to function between the meetings of the General Assembly. In 1936 the Association had 354 locals (R. 315); membership has always been voluntary, and a number of eligible employees at all times have been non-members. (R. 134-135) For years before the enactment of the National Labor Relations Act the Association and the Company had engaged in collective bargaining and the adjustment of grievances, and at that time there was in effect a written contract between them governing the procedure in such matters and their mutual relations. (Board's Exhibit 4.) It has been customary to renegotiate such contracts annually. (Board's Exhibit 4, R. 284-286; Board's Exhibits 30, 34, 35 and 36)

Before the adoption of the Act the Company bore such expense as was incurred in the operation of the Association. In other respects, however, the organization was independent of the management and entirely self-governing. Management had no representation on it, no right to appoint officers, local chairmen or committee or board members, and no veto power over any of its actions. (R. 103; see also Board's Exhibit 4) There is no suggestion in the record that the Company ever tried to control or influence the actions of the Association in any way.

Moreover, despite a subtle suggestion in the Board's brief about conditions of some twenty-four years ago, there is no evidence whatever that the

Association was ever used as a means of opposing other unions. On the contrary, the Company has no record of hostility toward organized labor nor toward any national labor organization. The total absence of proof of this character is material, because in a number of reported cases the effect of various incidents and matters has been determined in the light of whether the particular company involved had a record of hostility to organized labor, or the contrary.* Matters which in themselves would be treated as unimportant have in some cases been treated as acquiring importance because connected with an attitude of hostility toward union labor on the part of the company, known to the employees.

Likewise, this Company has never discriminated against any employee or organization of employees on account of any labor activities, or on account of an employee joining or not joining any labor organization (R. 216), or used any influence with or offered any inducement to its employees in any such matters.† This fact is not only shown by undisputed evidence, it is also admitted by the Board's counsel. During the trial of the case, when the Company's counsel was proving the substance of the foregoing

* "The employer's attitude towards unions is relevant." *N.L.R.B. v. Link-Belt Co.*, 311 U. S. 584, 588; "For years prior to the events in this case the Virginia Electric and Power Company . . . was hostile to labor organizations." *N.L.R.B. v. Virginia Electric & Power Co.*, 314 U. S. 469, 470-471.

† The trifling incidents at Shreveport in 1940 do not amount to an exception to this statement. They are discussed hereafter.

statement in some detail, the attorney for the Board, Mr. Woods, interrupted with the following objection:

"Mr. Examiner, I object to all of these things. The complaint here is clear, and charges one thing, that is, domination of the Association, and I have not charged, and do not now charge, and will not charge that the Company has discriminated against any employee for union membership, or that it has violated any section of the Act other than 8 (1) and 8 (2)." (R. 217)

When the National Labor Relations Act became effective on July 5, 1935, both the Company and the employees took the steps they considered proper to bring their existing relationship into conformity with the new legislation. On the part of the Company this involved giving immediate notice to the employees of their rights under the Act and the purpose of the management to comply with it fully; and the issuance of operating instructions for the guidance of those who had to deal with the application of the Act. On the part of the employees it involved a complete reorganization of the Association to place it on a self-sustaining financial basis and the negotiation of a new contract to supersede the one then in force. Everything was done in the most direct and simple manner, with no tricks or concealment. The record shows simply a straight-forward effort all around to obey the law as then understood.

On July 16, 1935 (*eleven days after the effective date of the Act*), Mr. J. E. Warren, then the Company's Vice President in charge of operations, later

its President, called a meeting in Atlanta of all the principal officials of the Company, both general and of the nine states in which the Company operates, for the purpose of announcing and giving directions on the Company's policy with respect to the Act. Also present at this conference were the chief staff assistants of the general departmental heads, as well as the President and General Secretary of the employee organization. (R. 104, 229)

Mr. Warren at this meeting read extensively from the National Labor Relations Act, laying especial emphasis on Sections 7 and 8, and explained to those in attendance the rights of employees under these provisions, as well as the duties and obligations of management thereunder. He further stated in substance that the employees had a right to do whatever they wished about labor organizations; that the employees had a right to select their own representatives and their own unions or organizations, and that management must exercise an absolute "hands-off" policy and in no wise advise with the employees on such matters, and under no condition indicate what form of organization management preferred, if any; and that it was and would be the policy of the Company to observe the Act to the letter and spirit. (R. 104, 230, 214-215, 222)

When he testified before the Board, Mr. Warren produced the copy of the Act from which he had read at the meeting. It contained a pencil jotting in his handwriting, made at the time, showing the points

he wanted to stress. This reads, "Cannot talk, cannot advise, cannot tell employees what form of organization we prefer." (R. 230)

At this meeting Mr. Warren also directed the officers of the Company and the state officials to call in their subordinates with supervisory power, and fully instruct them as to the rights of employees and the obligation of the Company under the Act, and the Company's policy of strict observance of and compliance with both the letter and the spirit of the Act. He instructed those present promptly to communicate the Company's policy to all such supervisory employees *and to inform the entire employee body* of the Company's policy as announced in the meeting, and of their rights under the Act, and the Company's policy strictly to recognize and respect all of their rights, as well as the Company's complete neutrality with regard to all labor organizations or activities. (R. 231, 215)

These directions of Mr. Warren were promptly carried out, and his statements, as hereinbefore recited, as to the rights of employees under the Act and of the duty of management thereunder, and of the policy to obey it strictly and to maintain neutrality in all labor organizational matters, were promptly transmitted to all supervisory personnel *and to the entire employee body of the Company.*

The following stipulation is a part of the record:

"It is stipulated that in July, 1935, the respondent had Division Managers and Superin-

tendents in various departments of the Divisions, and District Managers and Superintendents in various departments of the Districts, to the aggregate number of in excess of 120.

It is stipulated that if these men were called as witnesses they would testify that promptly after Mr. Warren's meeting of July 16, 1935, the substance of Mr. Warren's statement as to the Wagner Act, and as to the policy of the Company with respect to that Act as shown in Mr. Warren's testimony in this record, was by such Division and District Officers communicated to their subordinates *and to the general body of employees of the Company*. It is further stipulated that they would also testify that so far as each one's individual information went *the policy so stated had not been departed from*. It is stipulated that the record in this case may be considered as if such persons had so testified herein and with the same effect as if they had so testified." (Italics added.) (R. 245-246).

At about the same time the Company issued a bulletin, dated July 20, 1935 (R. 284), prescribing what practices should be followed by the operating people in business arrangements affecting the Association. This was in the nature of an operating instruction, not a statement of policy; it did not purport to cover the same ground as Mr. Warren's statement. The Board's brief speaks of it repeatedly as something the Company "issued to the employees" (pp. 3, 16, 30, 35), but evidence to this effect is lacking. Mr. Warren testified that it was prepared "for the guidance of the staff and its officers, supervisory em-

ployees." (R. 235) The purpose of the bulletin was to give direction for the withdrawal of Company support of the Association as required by the Act. Incidentally it stated certain minor privileges which it was then believed were permissible, and which were withdrawn early in 1937. The Board's misconstruction of this bulletin is discussed later.

The reorganization of the Association which was initiated in July and August, 1935, was the spontaneous act of the members. Suggestions for dealing with the problem arising from the new legislation were first requested from all the locals. (R. 271) A small committee chosen by ballot from the membership of the General Assembly then did the spade work of drafting a new constitution. (R. 128, 143, 180, 255) Following this the General Assembly at a four-day session studied, amended and finally approved the constitution (R. 280-282, 255-256), which was then submitted to the locals for ratification and became effective on February 1, 1936. (R. 107, 295) Mr. Dumas, Assistant to the Vice President of the Company, stated to the General Assembly that the Company would insist on meeting the provisions of the law to the letter, because it heartily approved of the objectives and policies the law set forth. (R. 214, 279) The statement in the Board's brief that "officials of the Association * * * revised the constitution" (p. 19) does not convey a correct impression of what occurred; and the unsupported finding of the Board (R. 115) repeated in its brief (p. 3), attribut-

ing the whole thing to Askew, Weil and Mrs. Wilkes, is dealt with in a later section of this brief.

Inasmuch as a new contract between the Association and the Company had also to be drafted and was to be submitted to the meeting of the General Assembly, this was drawn up by the small committee at the same time as the new constitution, and the terms were conditionally agreed upon with the management. (R. 144) Although the document was actually signed on September 3, the undisputed evidence is that it was not to become effective until February 1, 1936, and then only in the event the new constitution was ratified by the locals. (R. 148-149, 181, 213, 218, 236). No other union claimed to represent any of the employees during this whole period. Before the new contract became effective, a membership canvass had been made by the Association, and signed applications had been secured for membership in the reorganized Association from 12,187 employees, over 80% of those eligible to join. (Board's Exhibit 37, R. 107, 211)

After the reorganization of the Association, there followed a period of about five years which is of the greatest importance in this case. During these five years the Association was self-supporting and self-governing. There is no evidence of the slightest attempt on the part of the Company to dominate, control or influence it. There is nothing to suggest that the Association's policies or activities were affected in any way by the circumstance that in earlier years

the Company had contributed to its support. On the contrary, the record shows that throughout this period it carried on active and effective collective bargaining with the management, which resulted in substantial gains in wages and conditions of employment, and at the same time its membership steadily increased. (Board's Exhibits 16, p. 11; 19, p. 11; 27, p. 10; 28, p. 11; 29, p. 11; R-257-258, 315-316)

The Company meanwhile followed exactly the policy Mr. Warren had announced. The only further development came in 1937, when it was thought necessary to adopt stricter rules about the business relations with Association officers. Two successive bulletins were issued forbidding certain privileges that had previously been allowed. (R. 309-311) In the bulletin issued in April, which was distributed and circulated to all employees (R. 170-171), the following among other principles, were stated "to be observed by this Company in dealing with the Southern Association of Bell Telephone employees":

"The Company cannot engage in any activity designed to induce or prevent its employees from joining this or any other labor organization."

"The provisions of this Act make it illegal for an employer to dominate or interfere with the formation or administration of any labor organization, and the Management of this Company should conscientiously observe these provisions." (R. 311)

Five and one-half years after the passage of the

Act, the right of the Association to represent the employees of the Company was questioned for the first time, when the I. B. E. W., the complaining union, began its unsuccessful attempt to organize the employees of the Shreveport, Louisiana, exchange. (R. 257) No claim in behalf of any competing union has been made at any other of more than 900 exchanges which the Company operates. Statements critical of the complaining union at Shreveport, which are attributed to the management, are found by the Board to have reached four employees. (R. 117) We discuss this hereafter among the other unsupportable subsidiary findings.

The significant thing at Shreveport, however, is not the one or two unauthorized remarks that may have been made, but the authoritative action which the management of the Company immediately took to deal with the situation. The General Traffic Manager of the Company went to Shreveport and reminded the local manager of the Company's policy of neutrality in labor organization matters. (R. 243-244) The local manager called in all the supervisor operators and instructed them that the Company was absolutely neutral in the organizational contest. (R. 208-209) That policy was thereafter strictly followed.

Finally, after the complaining union had filed its charge with the Board, the referendum was conducted by the Association early in 1941, in which an overwhelming majority of the employees re-affirmed their desire to be represented by the Association as

their agency for collective bargaining. (R. 47-49, 322-324) Before the vote was taken, collective bargaining relations between the Association and the Company had been severed (R. 316-319), and the Company posted on every bulletin board a notice to employees reading as follows:

**"SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY**

NOTICE

TO ALL EMPLOYEES:

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY DIRECTS YOUR ATTENTION TO THE FOLLOWING SECTIONS OF THE NATIONAL LABOR RELATIONS ACT (WAGNER BILL):

[Here followed in full Section 7 and Section 8 of the Act.]

THE COMPANY RECOGNIZES ITS EMPLOYEES' RIGHT TO JOIN, FORM OR AFFILIATE WITH ANY LABOR ORGANIZATION OF THEIR OWN CHOICE AND FREELY TO EXERCISE ALL RIGHTS SECURED TO THEM BY THIS ACT.

THE COMPANY GUARANTEES ITS STRICT COMPLIANCE WITH ALL THE PROVISIONS OF THIS ACT AND THAT NO EMPLOYEE WILL BE DISCRIMINATED AGAINST OR SUFFER ANY OTHER PENALTY BECAUSE OF HIS OR HER EXERCISE OF ANY RIGHT SECURED BY THIS ACT.

THE COMPANY IS NOT INTERESTED IN WHETHER ITS EMPLOYEES JOIN OR DO NOT JOIN ANY LABOR ORGANIZATION.

**SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY**

J. E. WARREN,

President."

(R. 26-27, 233-234, 318-319)

The whole record can be summed up in the words of the Circuit Court of Appeals:

"No case has been cited to us, we have found none, where the record is so completely lacking in any evidence of anti-union activities, anti-union bias on the part of the employer; none where it shows such scrupulous recognition, such earnest efforts to ascertain and abide by the obligations imposed by the act, and such complete avoidance of any act or word from which domination or interference by the employer could be inferred; none in which there was such complete absence of even an atmosphere of seated purpose or preference for one labor organization over the other, or for any; none in which the evidence more positively and beyond question showed that the employees had freely and without any interference, coercion, restraint or even persuasion, on the part of the employer, selected their bargaining representative. There is no claim that the company has ever discriminated against any employee or organization of employees on account of any labor activities or on account of an employee joining or not joining any labor organization. There is no claim that it or any of its supervisory personnel has in any wise intimidated, coerced or used force or threats thereof, or offered any inducements to any of its employees for or on account of any of its employees' labor organizational activities, or on account of any of them joining or not joining any labor organization." (R. 340-341)

ANALYSIS OF QUESTIONS INVOLVED

The ultimate question which must be decided before the validity of the order of disestablishment in this case can be finally determined is whether the employees' organization is *now* employer-dominated. This ultimate question here involves some subordinate problems. The principal one is the effect to be given to Company support before the statute was enacted and more than five years before the complaint was filed. As to this we take issue with the position of the Board as expressed in the brief of its counsel, that nothing could purge the effect of such support before the Act except complete and technical disestablishment. We insist that, as the statute contains no such provision, it does not authorize the Board to set up a mechanical formula of this kind to be applied in all cases, regardless of the particular facts. Company influence in the long past cannot justify passing a death sentence upon a labor organization which has become wholly free from such influence and represents at the time of the hearing the free and untrammelled choice of the employee body. To do so would deny to such employees the rights guaranteed to all employees by the National Labor Relations Act (see *Section 7 of the Act*).

No one doubts that under some circumstances the Board may rely on past acts of company domination or support as creating a presumption of present company influence sufficient to justify disestablishment. The decisions of this Court on which the Board relies

establish this. None of these cases on the facts are at all similar, however, to the present case. In each of them there were grounds, which are absent here, for holding that the company influence was continuing substantially to the time of the hearing. If any interval of time elapsed after withdrawal of company support, it was of short duration. In the present case the only company support shown by substantial evidence ended with the passage of the Act. For at least five years the Association had been operating freely, independently, and with no substantial evidence of company influence or domination. Such a situation has not heretofore been presented to this Court. Furthermore, the present case differs from the cases on which the Board relies in the complete and uncontradicted showing that this particular Company has no record of hostility to organized labor or any particular type of organization; and in the uncontradicted showing that the Company has uniformly, consistently and without evasion endeavored to obey the Act in all respects. Moreover, no competing union has here been opposed or discriminated against; the Company has displayed no favoritism.

How simple an issue this case presents and how strikingly it differs from the decisions of this Court cited to sustain the Board's order, will be apparent when the case is stripped of certain subsidiary findings of the Board which are without substantial support in the evidence. Without these subsidiary findings the order of disestablishment can rest upon

nothing but the Board's theory that the effect of the support formerly extended by the Company to the Association must be taken to have continued for more than five years by virtue of a mere presumption in the face of strong evidence to the contrary.

We shall endeavor to show later that the findings to which we refer cannot be sustained. At the moment, let us merely set them out and characterize them as we believe the evidence requires:

1. An erroneous construction of the Company's bulletin of July 20, 1935 (followed by two bulletins in 1937), by which the Board asserts that the bulletin nullified in the minds of the employees Mr. Warren's statement informing them of their rights under the Act and of the Company's complete impartiality in the matter of organizing for collective bargaining. Actually the bulletin cannot be read as contradictory of Mr. Warren's statement, but was merely an honest attempt to apply the Act as then understood to the existing situation.

2. A finding of continued support and domination in certain minor privileges allowed to the Association (no question of discrimination between unions arising) during a period ending more than three years before the complaint herein. These privileges were promptly discontinued in 1937 when some question arose as to the propriety of permitting them.

3. A finding, which is not supported by evidence, that the Company is "responsible" for the activities of Mrs. Wilkes, Askew and Weil, particularly in "accomplishing" the reorganiza-

tion of the Association; and an unwarranted assumption, which the Association's records negative, that to the employees these persons represented the management.

4. A finding of interference with the rights of the employees in two trivial incidents at Shreveport late in 1940,—an unauthorized conversation of a local traffic manager with a supervisor operator which was promptly repudiated and corrected by the management, and a single ambiguous sentence attributed to an employment supervisor which is interpreted as hostile to the complaining union. If such insignificant occurrences can be considered to be in technical violation of the Act, they cannot constitute substantial evidence to support an order of disestablishment.

These are all the subsidiary findings of the Board we have discovered upon which it sustained the charge of continued domination and support, other than the simple record of the assistance which the Company gave the Association under its old Constitution before the passage of the Act, and the Company's continuing to recognize and deal with the Association during and after its reorganization without a technical "disestablishment."

With the above unsupportable findings eliminated,—as they must be eliminated,—the remaining question is simply whether the Board could order disestablishment in 1941 because of company support that ended in 1935. The Board insists upon following this course upon the theory, as we understand its

position, that the effect of the past company support of the Association could never be dissipated unless the Company in so many words withdrew recognition. To draw a conclusion of present domination from the evidence in this case by the application of such a dogmatic rule, we believe to be wholly arbitrary and beyond the power of the Board. A contrary conclusion is compelled by affirmative evidence that the effect of past company influence had been long since dissipated.

This affirmative evidence centers around the several declarations which the Company made to the entire body of employees over a period of years of its policy of non-interference in the self-organizing activities of the employees and their freedom of action to join or refrain from joining labor organizations; the repeated expression by the employees of their desire to be represented by the Association, particularly in the 1941 balloting after collective bargaining with that organization had been suspended; and the demonstrated independence of the employees in effecting a reorganization of the Association as an independent agency in 1935 and in collective bargaining through the Association since that time. With respect to this evidence, also, the Board has made certain unsupported findings and has in part refused to recognize the effect to which, in the situation as a whole, it is entitled. The basic error of the Board, however, lies in its applying a preconceived mechanical test to the problem of disestablishment instead of examining and deciding the question with a view

only to protecting the employees in their right to be represented by an agency of their own choosing that is free of company domination at this time.

**PAST COMPANY INFLUENCE WHICH IS NO LONGER
EFFECTIVE DOES NOT AUTHORIZE ORDER
OF DISESTABLISHMENT**

**(a) Present Domination or Influence by Employer
Necessary to Sustain Order of Disestablishment**

The purpose of the National Labor Relations Act is remedial, not punitive:

"The remedial purposes of the Act are quite clear. It is aimed, as the Act says (§1, 29 USCA §151) at encouraging the practice and procedure of collective bargaining and at protecting the exercise by workers of full freedom of association, of self organization and of negotiating the terms and conditions of their employment or other mutual aid or protection through their freely chosen representatives."

• • • • •

"• • • • We have said that 'the power to command affirmative action is remedial not punitive' [citing cases]. We adhere to that construction." (*Republic Steel Corporation v. National Labor Relations Board*, 311 U. S. 7, 10, 12.)

See also *National Labor Relations Board v. Newport News, etc. Company*, 308 U. S. 241, 250; *National Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U. S. 240, 257. More spe-

cifically, we are concerned with the right conferred upon the employees by Section 7 of the Act, namely:

"Employees shall have the right * * * to bargain collectively through representatives of their own choosing."

In order to protect this right, the Act forbids employers to dominate, interfere with or contribute support to a labor organization. (Section 8(2)) If an employer engages in these forbidden acts, the result may be to interfere with the right of the employees to select bargaining representatives of their own choosing; and if such a state of affairs has been created and exists at a given time, the Board may at that time refuse to permit the dominated or supported labor organization to represent the employees. Thus acts of domination, interference or support, although broadly prohibited as unfair labor practices by Section 8(2), will justify an order by the Board "disestablishing" a labor organization only when the effect of the acts at the time in question is to interfere with or obstruct the basic right of the employees to select freely their representatives for collective bargaining. Otherwise, such an order, precluding the employees from selecting a particular organization as their representative, would not effectuate the policy of the Act, but would thwart it. The Board may not make such an order as a means of punishing the employer, for its powers in this respect must be directed toward correcting some existing evil in the situation with which it is confronted. This is the principle, we believe, which this

Court was stating in the case of *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261:

"We may assume that there are situations in which the Board would not be warranted in concluding that there was any occasion for withdrawal of employer recognition of an existing union before an election by employees under §9(c), even though it had ordered the employer to cease unfair labor practices." (p. 270)

A clear distinction exists, therefore, between past unfair labor practices constituting *acts of domination* on the part of an employer and an existing *state of domination* in the current relations between the employer and the union. Unless this distinction is noticed, the use of the word "domination" may cause confusion. An order to withdraw recognition from a union cannot be supported unless the union is presently dominated by the employer. An inference of present domination may be drawn, of course, in a proper case from past acts of domination; but in a different case the evidence may show that the effect of the past acts has been dissipated and no inference of present domination may be tenable. The Board is to find the facts and draw the appropriate inferences, but its findings must be supported by substantial evidence and its inferences must be reasonable.

Thus, in reviewing the facts in the *Heinz* case, which we discuss hereafter (*H. J. Heinz Company v. National Labor Relations Board*, 311 U. S. 514, 522), the Court said:

"Disestablishment is a remedial measure under §10(c) 29 USCA §160(c) to be employed by the Board in its discretion to remove the obstacle to the employees' right of self-organization, resulting from the continued or renewed recognition of a union whose organization has been influenced by unfair labor practices. Whether this recognition is such an obstacle is an inference of fact to be drawn by the Board from all the circumstances attending those practices.

. . .

From this and other circumstances disclosed by the evidence, the Board inferred, as it might, that *the influence of the participation of petitioner's employees in the organization of the Association had not been removed* and that there was danger that petitioner would seek to take advantage of such *continuing influence* to renew its recognition of the Association and control its action." (Italics added.)

The reverse of the situation in the *Heinz* case exists here, and the opposite result is required—namely, the influence of the employer's support has been removed and there is no continuing influence that could be taken advantage of.

In connection with this line of thought, we believe the Board's counsel here confuse the question actually at issue in this case. Opposing counsel evidently believe that the Circuit Court of Appeals held that the unlawful conduct of the employer must be continuing at the time of the complaint and hearing in

order for the Board to be authorized to order disestablishment.* In this view opposing counsel have misapprehended the ruling actually made by the Court, and indeed the question actually involved. It is not a question of whether an employer has continued unlawful acts to the time of hearing. The question is, rather, whether, taking into account the past acts of the employer, the employee organization at the time of hearing is *then* free from company influence and domination. A failure to observe this distinction is probably the cause of opposing counsel's misunderstanding of the decision of the Circuit Court of Appeals in the respect above pointed out.

It is settled that the courts can review the question of whether the affirmative relief ordered by the Board is appropriate to accomplish the purposes of the Act. With reference to the authority of the Board to order affirmative action, this Court has recently said, in *Southern Steamship Company v. National Labor Relations Board*, 316 U. S. 31, 46, " * * * this discretion has its limits, and we have already begun to define them." See in this connection *National Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U. S. 240, 257; *Republic Steel Corporation v. National Labor Relations Board*, 311 U. S. 7, 12; *National Labor Relations Board v. Express Publishing Company*, 312 U. S. 426.

It would seem obvious that to disestablish an employee organization which at the time of the order

* See Board's brief, pp. 52-53.

of disestablishment was entirely free from company influence and represented the free choice of the employees, would not accomplish the purpose of the Act. Such an order would directly frustrate one purpose of the Act, namely, the protection of the employees' right to choose whatever labor organization they wish. If based on past company influence it would be a mere punitive order which is beyond the power of the Board to make. Where, as pointed out by this Court in the cases just cited, an order of the Board is not appropriate to accomplish the purposes of the Act, it is the duty of the court to set the order aside.

The Act authorizes the Board to institute proceedings whenever it is charged that any person "has engaged in or is engaging in" an unfair labor practice; and if the charge is sustained, to order the respondent to cease and desist and "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies" of the Act. (*Section 10(b) and (c)*) This agrees with our analysis of the problem. True, the Board may take action because of past unfair labor practices which an employer "has engaged in," but as we have said the action must be appropriate to effectuate the policies of the Act. For example, an employer may not be ordered to cease all types of unfair labor practices merely because he has committed an unfair practice of a particular kind. *National Labor Relations Board v. Express Publish-*

ing Company, 312 U. S. 426.* Clearly, then, the Board cannot make the occurrence of past unfair labor practices the occasion for going even beyond the issuance of a "cease and desist" order, by ordering withdrawal of recognition, unless the present effect of the past practices justifies that action regardless of those practices as violations of the Act in themselves.

We speak in this connection of unfair labor practices because that is what the section of the Act under discussion deals with. Obviously, the conclusion applies with even greater force in a case such as ours, in which the employer's acts in supporting the union occurred before the enactment of the statute, at a time when they were not unlawful and hence not unfair labor practices.

**(b) Decisions of This Court Do Not Sustain the
Position of the Board**

(1) Distinguishing Facts of the Cases

We have said that the decisions of this Court on which the Board relies are very different on their facts from this case, particularly in that active company influence was relatively close in point of time to the proceeding before the Board. In the following paragraphs we give certain facts relating to a num-

* "To justify an order restraining other violations it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past. That justification is lacking here." (312 U. S. 437.)

ber of the cases decided by this Court which are most commonly cited as controlling upon the proposition that recognition should be withdrawn from a union that has been dominated or favored by the employer.

National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., 303 U. S. 261. In this case the employer had not only interfered in the organization of an employee association but had afterwards continued interference, restraint, and coercion of employees and financial support of the employee organization. The members of the organization paid no dues, could not present grievances without the consent of the employer, and the employer had an equal vote upon changes in the by-laws. The company openly opposed a rival union.

National Labor Relations Board v. Pacific Greyhound Lines, Inc., 303 U. S. 272. The employer in this case sponsored, interfered with and supported an employees' organization. "During a period of three years it had been successfully used by respondent as an instrument for preventing three successive attempts for the organization by respondent's employees of a union free from company domination." (pp. 274-275)

National Labor Relations Board v. Newport News Shipbuilding & Dry Dock Company, 308 U. S. 241. In this case a joint organization of employees and management, governed by a general joint committee on which management was directly represented, and obviously illegal under the Act, was continued until

the Act was held constitutional in 1937, when a revision was made. This revision, however, "left the company still in the position of dominating and interfering in the formulation and administration of the plan." (p. 247) Even after this revision, action by the governing committee to be effective required the agreement of the company, and amendments to the plan could "become effective only if the company fails to signify its disapproval within fifteen days of adoption." (p. 249) An attempt was made before the Circuit Court of Appeals to show that while the case was in that court this latter provision had been eliminated, but even with this amendment the case was one in which company control of the situation existed up to and beyond the actual hearing before the Board. Under this set of facts this Court sustained the Board in ordering disestablishment, saying, "On the record as made we cannot say this was error." (p. 250)

National Labor Relations Board v. Falk Corporation, 308 U. S. 453. The decision discloses that the management in this case had a long record of hostility to organized labor and that the employee organization there involved was instituted in 1937, "as a convenient weapon to prevent the exercise of its employees' rights to self-organization and collective bargaining." (p. 461) The Court was, therefore, dealing with a scheme where a purportedly independent labor organization was in reality a mere dummy, a mere instrument used by management to prevent a true organization of its employees from

arising. Under these circumstances the Court refused to order the Board to place this organization on the ballot upon the mere theoretical condition that it should no longer be dominated by the employer. Since the use of the employee organization as a mere agency of management had continued to the time of the hearing, the Board concluded that no *sudden change* in the situation could instantaneously free the minds of the employees from the effects of this close and current domination.

H. J. Heinz Company v. National Labor Relations Board, 311 U. S. 514. This case involved a contest between an independent union and one of the national labor organizations. Supervisory employees of management had aggressively and continuously interfered in this contest and had supported the independent union and participated in its formation. While management later went through the form of instructing such supervisory employees not to interfere, it "took no step, so far as appears, to notify the employees that those activities were unauthorized, or to correct the impression of the employees that support of the union was not favored by petitioner and would result in reprisals." (p. 521) A close study of the case indicates that this last fact was really the controlling feature in the view of this Court.

International Association of Machinists etc. v. National Labor Relations Board, 311 U. S. 72. This was a case of a contest between two rival unions.

Instead of declaring its neutrality, the employer had evinced great hostility to the complaining union and assisted the other in its organization drive. One contention of the favored union was that no unfair labor practices were committed between July 28, when it obtained a majority of tool room employees as members, and August 11, when it received a closed shop contract. The Court characterized this contention as an "irrelevant refinement." (p. 79) The Court upheld the order directed against this union and its contract with the employer as a proper exercise of the Board's authority; and in view of the background of facts said that "the Board has the power to take appropriate steps to the end that the effect of those [unfair labor] practices will be dissipated." (p. 82)

National Labor Relations Board v. Link-Belt Company, 311 U. S. 584. This case involved a contest between what the Court calls an "inside" union and what the Court calls an "outside" union. The starting point of the decision is the declaration that "an 'inside' union, as well as an 'outside' union, may be the product of the right of the employees to self-organization." (p. 587) In considering the whole factual situation the Court begins with the proposition that "the employer's attitude towards unions is relevant." (p. 588) The factual situation which the Court held sustained the Board's conclusion embraced these elements: (1) The company's long hostility towards the national labor organizations; (2) its long practice of industrial espionage, which apparently had not ended; (3) the aggressive aid which its

supervisory officers gave to the independent in opposition to the national union; (4) "the failure of the employer to wipe the slate clean and announce that the employees had a free choice"; (p 598) (5) the discriminatory discharge of employees for activity in behalf of the "outside" union.

Westinghouse Electric & Manufacturing Company v. National Labor Relations Board, 312 U. S. 660. The facts in this case are not shown in the decision of this Court, so reference is made to the facts as reported in the Circuit Court of Appeals' decision, 112 F. (2d) 657. The case turned on the fact that, while the company made a statement to some representatives of an employees' organization that the company would be neutral, nevertheless "the company did not seek to broadcast it or its equivalent in any way to the employees—about 2,500 in all." (pp. 660-661) "The employees at large had not been advised that the company was wholly indifferent whether they joined the new union." (p. 660)

The facts in the foregoing cases on which the Board relies are sufficient to distinguish them completely from the case at bar. It cannot be said with accuracy, that this Court has ever gone to any such extent upon the question of disestablishment as the Board seeks to go in the present instance. The contention of the Board's counsel, that the Board's decision is sustained by any of the cases we have reviewed, is therefore untenable. In all these eight cases there was no significant period of time within

which the company influence exerted in behalf of the favored union might have been dissipated;* in none of them was there any notice to the general body of employees by which the employer might have dissipated that influence; and in a number of them there were the additional circumstances of clear discrimination in favor of a particular union or a manifest policy of hostility to unions such as the union bringing the complaint. The facts in the present case are definitely to the contrary on each of these points. In addition, it is significant that the unions which were found to be dominated in the cases discussed above were definitely smaller and mostly more local in character than the Association in the present case, which is a union comprising a membership amounting at the time of the hearing to about 17,500 workers and covering nine states. (R. 265, 257-258) As a matter of plain common sense, an organization of such size and stability is not easily dominated. If anybody was coercing or influencing these 17,500 people during these five years, there would be some more cogent evidence of that fact than a few words addressed to two or three operators at Shreveport.

* In most of the cases, as shown either in the opinions of this Court or the Circuit Courts of Appeal or in unchallenged findings of the Board, there were affirmative acts of interference by the employer up to or approximately up to the issuance of the complaint. Indeed, the whole chapter of employer interference, discrimination, etc., upon which the case turned was in typical instances compressed into a period of weeks, or, at most, a very few months. In no case was there the possibility of freedom from employer influence for a period as great as a year.

(2) Historical Continuity of the Association Not Controlling

It is argued, however, that the controlling circumstance here is one that we have not mentioned in the foregoing analysis of the cases. The Board contends that the Association must be disestablished because of (1) the historical continuity of the present organization with the Association as it existed prior to the Act, and (2) because the Company did not specifically withdraw recognition as a means of breaking the old relationship. Support for this position is claimed from language such as that of this Court in the *Newport News* case (308 U. S. at p. 250), or of Judge Learned Hand, referring in the *Westinghouse* case to the requirement of a "line of fracture" between the old and the new labor organizations (112 F. (2d) at 659, 660). (R. 115) Taken in the context of facts in which they were written, such expressions, we believe, should not be read as prescribing a rigid rule that the effect of former employer influence can never be dissipated so long as some degree of historical continuity exists in the labor organization and in its relations with the employer. So to hold would do violence to the very principle from which the authority of the Board to require disestablishment is derived.

Contrary to the statement in the Board's brief (p. 33), we have never thought it of controlling importance to determine whether the present Association should, from the standpoint of technical law, be considered the old organization or a new employee or-

ganization. In any event it could be considered at least an outgrowth of the old organization. This we do not contest. The entirely changed form of organization and functioning led the Circuit Court of Appeals to say that regardless of its historical connection "the old Association has been completely superseded by the present one, formed under a new constitution." (R. 341)

The question in the present case is whether the historical connection, and the relation of the Company to the Association existing before the Act, are such as to justify the inference of the Board that more than five years thereafter the Company dominated the then existing employee organization. If we grant that the historical connection could justify a rebuttable inference of continued domination (though no case has ever sustained the carrying forward of such inference for any such period of time), it was here rebutted by undisputed proof.

(3) New Relationship Required, But Technical Formalities Immaterial

We come now to the other part of the argument,—the contention that continued recognition of the Association since the enactment of the statute prevented the establishment of a new and legally correct relation between the Association and the Company. The Board's ruling announces the proposition that upon the passage of the Act the Company was under the duty of refusing to recognize the Association as a labor organization of its employees. This is based on the fact that the Company had supported the As-

sociation before the Act was passed. The Board lays this down as a fundamental principle and apparently regards it as an established rule of law.

Support of the Association before the passage of the Act was not illegal. The adoption of the Act placed certain duties on the Company and gave the Board authority to enforce compliance. What those duties were is to be determined by the provisions of the Act. The employer's duty must be tested, not only with respect to the unfair labor practices specifically defined in the Act, but also with regard to the requirements that the employees shall be entitled to bargain collectively through representatives of their own choosing.

Upon its passage the Act imposed upon the Company the immediate duty of ending its financial support of the Association; this the Company did. It imposed the further duty "not to dominate or interfere with" the administration of the Association, and not to discriminate against its employees. In all of these respects the Company's record under the proof is free from legitimate criticism. When the Act became effective, we may admit that the Company was obligated to free the collective bargaining process of any carry-over of influence from its previous financial support, by a clear declaration to the employees of its neutrality, and its purpose to respect their independence. The statute, indeed, gives the Board no specific authority to act at this point, since it is empowered to take action to effectuate the policies of

the Act only upon a finding that a person has engaged in or is engaging in unfair labor practices; and, obviously, company support before the Act became effective was not an unfair labor practice. Such a duty may be implied, however, because to continue to deal with the Association without thus clearing the decks might be said to be an act of interference or domination. In the light of such a declaration by the employer, the employees had the right to decide, free of interference or coercion, whether they wished to continue to be represented by the Association.

The difference here between us and counsel for the Board is clearly marked out. See their brief page 29. They agree that support before the Act cannot be considered an unfair labor practice or the basis for affirmative relief. They say that "continuing to deal with such a labor organization * * * does violate the Act." We insist that this statement is too broad; and, while agreeing that the Company was required to take adequate steps to clear the decks, we deny that the Act authorized the Board to say that, regardless of all that had happened in the five and one-half years since the Act was passed, nothing but formal disestablishment would meet the requirements of law.

A clear statement of the duty actually resting on the management of the Company, upon the passage of the Act, with respect to an organization which it had previously supported, is found in the decision

of Judge Learned Hand in the Second Circuit, in *Western Union Telegraph Company v. National Labor Relations Board*, 113 F. (2d) 992. Both the Court rendering this decision and the writer of the opinion have evidenced sympathy with the policy and philosophy of the statute.* We quote from that opinion as follows:

" * * * At any rate the Company at no time took any action to declare publicly to all its employees that the act had completely changed its relations with the Association; that, so far as the old constitution might be considered as not allowing any right to strike, it was at an end; that it proposed for the future not to allow preferences or any other favors to members; that while it would continue to treat the Association as the collective bargaining agent of its employees, the Association must stand upon its own feet, and meet the competition of the great affiliated unions; and that in that competition the Company would stand rigidly aside, accepting whatever might result with equal grace, and making no distinction in its treatment between those who electioneered for one side or the other.

We think that some such absolute and public cleavage between the old and the new was a condition upon further recognition of the Association. So we read *National Labor Relations Board v. Greyhound Lines*, 303 U. S. 261, 271, 58 S. Ct. 571, 82 L. Ed. 831, 115 A.L.R. 307; *National Labor Relations Board v. Newport*

* It is interesting to note that the Board appears to rely on this decision as sustaining its contrary view. See the Board's opinion (R. 115).

News Shipbuilding & Dry Dock Company, 308 U. S. 241, 250, 60 S. Ct. 203, 84 L. Ed. 219; and National Labor Relations Board v. Falk Corporation, 308 U. S. 453, 461, 60 S. Ct. 307, 84 L. Ed. 396. It is true that in those cases the unaffiliated union had had employer's representatives on its governing bodies; but that was merely an incident, not a test. The theory on which the Supreme Court went, as we understand it, was that an unaffiliated union, known for long to be favored by the employer, carries over an advantage which necessarily vitiates its standing as exclusive bargaining agent. It cannot remain such *until measures are taken completely to disabuse the employees of any belief that they will win the employer's approval if they remain in it, or incur his displeasure if they leave.* National Labor Relations Board v. Fletcher Co., 1 Cir., 108 F. 2d 459, 467; National Labor Relations Board v. Brown Paper M. Co., 5 Cir., 108 F. 2d 867, 871; Heinz & Co. v. National Labor Relations Board, 6 Cir., 110 F. 2d 813, 847, 848; National Labor Relations Board v. Greenbaum-T. Co., 7 Cir., 110 F. 2d 984, 987, 988; Westinghouse Electric & Mfg. Co. v. National Labor Relations Board, 2 Cir., 112 F. 2d 657." (Italics added.) (pp. 996-997)

In the present case there is no evidence that any employees ever had the belief that they would win the favor of the Company by remaining in the Association, or the reverse. A conclusion to this effect could be only a matter of theoretical speculation. But if such a belief had ever existed, the conduct and declarations of the management, and particularly

the absence of any trace of discrimination over a period of years, would have removed it.

The sound principles which, we submit, are to be deduced from the Act and with which the decisions of this Court are in harmony may be briefly summarized. It is by these principles that the question presented by this case should be decided:

Historical continuity with a company-supported union will not justify an order of disestablishment if there has been a time when the employer's influence and interference with or support of the organization has entirely ended and the employees have been adequately advised of their entire liberty of action, and have thereafter expressed their choice of the organization as their representative for collective bargaining.

The break required need be of no particular form, such as disestablishment, formal or informal. There is no magic in these terms or in any procedure. "We are not here dealing with the 'dissolution' or 'reorganization' of complex corporate structures. We are concerned with individual rights and human relationships as defined by a sweeping statute. So long as the employee is adequately and carefully protected in the rights guaranteed by Section 7 of the Act, we are not concerned with the exact technical form of a 'disestablishment'."*

* Dobie, J., in *E. I. du Pont de Nemours & Co. v. National Labor Relations Board*, 116 F. (2d) 388, 399; certiorari denied 313 U. S. 571.

The question here is not affected by the circumstance that the Company on September 3, 1935, signed a new contract governing the procedure for collective bargaining. It was the regular procedure to execute new contracts of this type annually. (Board's Exhibit 4, R. 284-286, Board's Exhibits 15, 30, 34, 35 and 36) The changes in the form of contract were those desired to make it conform to the withdrawal of the previous financial support of the Company. Entering into this contract shows only that the Company continued to deal with the Association to which the great majority of its employees belonged, but this has never been denied. All of which merely brings us back to the basic question here considered, namely: Was the Board correct in its position that nothing could possibly satisfy the statute except disestablishment by the Company, and that, absent disestablishment, the Board could treat the Association, five years thereafter, as Company-dominated, regardless of everything that had occurred during the period? The circumstances of the signing of this new contract, however, emphasize the fact that in dealing with this situation the Company at no time attempted any subterfuges or any subtle evasions. It was openly, sincerely, and at times possibly a little clumsily, trying to obey the new law.

(c) Any Presumption of Present Domination Arising from Past History Is Rebuttable

It is believed that the above proposition logically results from the decisions of this Court which we

have heretofore reviewed. It was not necessary for the Court to make a specific ruling to this effect, because, as heretofore pointed out, in no one of those cases was there any satisfactory evidence to rebut the presumption from company interference and domination, and indeed such interference and domination was continuing up to or near the hearing. All the Court holds in those cases is that the drawing of inferences from proof is for the Board and not the courts and that, under the circumstances there presented, the Board was justified in drawing the inference of continuing domination. That these cases do not establish a rule that such presumption could not be rebutted follows consistently from other decisions of this Court in which the Court uniformly rejects any effort to establish a rigid formula controlling matters where "the criterion is necessarily one of degree." This disapproval of "those who seek for mathematical or rigid formulas" in dealing with practical problems growing out of varying states of facts is stated by this Court in *Santa Cruz Fruit Packing Company v. National Labor Relations Board*, 303 U. S. 453, 467-468.

The most carefully considered decisions in the Circuit Courts of Appeal deal with this problem in accord with the position here taken. They construe the effect of the decisions of this Court as authorizing the Board to draw an inference of continued domination from past history, but they also rule that such presumption is rebuttable and must yield to uncontradicted proof. See here the strong decision of the

Second Circuit in *Western Union Telegraph Company v. National Labor Relations Board*, 113 F. (2d) 992, from which we have quoted above (p. 000).

In the decision of the Seventh Circuit in *A. E. Staley Manufacturing Company v. National Labor Relations Board*, 117 F. (2d) 868, referring to decisions of this Court which we have heretofore reviewed, the Court accepts the view that such decisions announced the theory that, in the absence of satisfactory evidence to the contrary, an unaffiliated union known to be company influenced will be supposed to continue as such. The Court then adds: "We do not think such a theory can prevail in the face of direct and uncontradicted evidence that petitioner's employees understood that they were free in theory and in fact to join any labor organization they desired." (p. 878).

The decision of the Fourth Circuit, in *E. I. du Pont de Nemours & Company v. National Labor Relations Board*, 116 F. (2d) 388, certiorari denied 313 U. S. 571, is also an able study of the same question and is in substance to the same effect.

We therefore approach the consideration of the facts in the case at bar on this particular point from this standpoint: The Board, exercising its power to draw reasonable inferences from the facts, may in a proper case infer continued company influence from past domination; but this inference is a rebuttable presumption. Whether it has been rebutted is to be determined upon an examination of all the facts.

The significant fact to be considered is whether, at some definite point or points, adequate steps were taken by the employer to disabuse the minds of the employees of any idea that they would win the favor of management by adhering to the organization or would incur its disfavor by joining another. When evidence such as this destroys the presumption, a finding of domination by the Board based thereon can rest only upon a mere fiction.

(d) There Is No Substantial Evidence of Present Domination, and Any Presumption from Past Company Influence Was Here Completely Rebutted by Uncontradicted Proof

The only evidence relied on by the Board to show continuing domination is dealt with in discussing certain erroneous subsidiary findings made by the Board. The discussion is not here repeated. With these erroneous subsidiary findings eliminated, there is no evidence, substantial or otherwise, of present acts of domination, or of a present state of domination. There remains nothing but the presumption which the Board undertook to draw from Company support before the passage of the Act. This presumption was completely rebutted.

(1) Principal Points of the Evidence

Whether a presumption of continued domination from the past Company support of the Association is to be considered as persisting throughout the whole period of more than five years after the passage of the Act must be determined from a consideration of

all the facts. The evidence, when given a reasonable construction, is directly contrary to any such presumption. For convenience we now tabulate the principal facts which refute any presumption of company domination.

The Declaration of the Company's Policy.

(1) Mr. Warren's (Vice President in charge of operations) thoroughgoing statement of July 16, 1935, from his text, "cannot talk, cannot advise, cannot tell employees what form of organization we prefer" (R. 230), which it is stipulated was communicated to the general body of employees of the Company. (R. 245-246)

(2) Mr. Dumas's (Assistant to the Vice President) statement to the thirty-five members of the General Assembly of the Association on August 30, 1935, that the Company would insist on meeting the provisions of the law to the letter, because it heartily approved of the objectives and policies the law set forth. (R. 214)

(3) The April, 1937, bulletin stating that the Company could not engage in any activity designed to induce or prevent its employees from joining any labor organization, and that the Company should conscientiously observe the provisions of the law. (R. 311, 170-171)

(4) The bulletin of February, 1941, quoting Sections 7 and 8 of the Act and specifically recognizing

the right of the employees to join any labor organization and guaranteeing the Company's compliance with the Act and that there would be no discrimination. (R. 26-27, 113-114)

(5) The special statement of the Company's neutrality made by the local manager to all supervisors at the Shreveport exchange in December, 1941, when the I. B. E. W. began its efforts to organize that exchange. (R. 117, 208-209, 243-244)

The Company's Compliance with Its Announced Policy.

(1) The stipulation that to the knowledge of the 120 Company officials who attended Mr. Warren's conference of July 16, 1935, the policy of non-interference in matters of labor organization which he then announced had not been departed from. (R. 245-246)

2. The statement of record of counsel for the Board that there is no charge that the Company has discriminated. This admission came as a part of an objection by the Board's counsel when the Company was proving that it had at no time discriminated against any employee or attempted to coerce its employees or employed labor spies or done any of the typical things to which management might resort if hostile to some form of labor organization. In his objection to this line of evidence, the Board's counsel said:

"I object to all of these things. The complaint

here is clear, and charges one thing, that is, domination of the Association, * * *." (R. 217)

(3) The passage of more than five years without any charge or any evidence that the Company has interfered or meddled in the affairs of the Association or expressed any hint as to how its affairs should be conducted.

(4) The prompt withdrawal of the minor privileges innocently allowed to the Association when their propriety came into question in 1937, and the lapse of more than three years since there has been anything that could be considered even the granting of a favor. (R. 111-112, 216, 231-232, 310-311)

The Employees' Free Selection of the Association as Their Representative

(1) The new membership cards signed by 12,187 employees, more than 80% of those eligible, after notice of the Company's policy of non-interference expressed by Mr. Warren in 1935. (R. 107, 211, Board's Exhibit 37).

(2) The continuance of their membership in increasing numbers by the employees from year to year thereafter until more than 17,500 were members at the time of the hearing. (Board's Exhibits 16, p. 11; 19, p. 11; 27, p. 10; 28, p. 11; 29, p. 11; R. 258)

(3) The referendum conducted by the Association in February, 1941, after the Association had

ceased to act as bargaining agency, after the Company bulletin notice of February, 1941, had been posted in every building, and after the organizing efforts of the I. B. E. W. had begun,—resulting in an overwhelming majority for the Association. (See discussion pages 49-51, *infra*)

Other Evidence of the Independence of the Association

(1) The evidence of the freedom of the Association from any outside influence or control, as shown by its spontaneous and self-determined internal proceedings. (See discussion pages 66-74, *infra*)

(2) The active and effective collective bargaining carried on by the Association, resulting in substantial benefits secured for its members.

(2) Effective Collective Bargaining

This last point, the collective bargaining between the Association and the Company, deserves further comment:

In general, the bargaining process between the Company and the Association has been this: local, district and division representatives have been elected to deal with the Company's representatives. In addition, there have been general employee representatives for each of the four main departments of the Company, to-wit, commercial, plant, traffic and accounting, who deal with the respective departmental heads. There has also been regular bargaining conducted between the general representatives

of all the employees, through the General Executive Board on the one hand and the President and Vice President in charge of operations of the Company on the other.

Written records of all bargaining conferences have been kept, reflecting agreements reached and matters deferred as well as those not concurred in. These are signed by representatives of the employees and the representatives of the Company, and constitute written contracts between the Association and the Company. Records of the general bargaining conferences were introduced in evidence and are a part of the record. Records of the district and division bargaining conferences, on account of their bulk, by agreement were not introduced into the record. The testimony is undisputed, however, that these district and division bargaining conferences have satisfactorily dealt with and handled local matters, and especially individual grievances.

Records of the general bargaining conferences for the years 1936 through 1940 are in evidence. It appears without dispute that during these years this general bargaining alone has resulted in agreements as to wage increases and other matters the effect of which has cost the Company in excess of three million dollars annually. This bargaining also has resulted in longer vacations with pay and many improved working conditions.

(R. 222-227, 315-316; see also Respondent's Exhibits 2, a-z)

(3) The Balloting Conducted by the Association

Another matter mentioned above is also of such importance that it requires further discussion. This is the balloting which the Association conducted in 1941. When the right of the Association to act for the employees was questioned by the Board, the Association, in February, 1941, determined to hold a referendum in which the employees would be given the free opportunity again to express their choice. As a preliminary it notified the Company that until and unless a new mandate was received it would no longer act as bargaining agent. (R. 316-317) The Company accepted this notice and proceeded to post on every bulletin board and in every building a most sweeping statement of its neutrality and of the employees' rights. (R. 113-114, 317-319)

After all this was done, the referendum was held and the results certified by public accountants. Practically 80% of the employees in this referendum selected the Association as the bargaining agency. (R. 322-323, 47-49)

The Board refused to give effect to this referendum as a free choice by the employees. Its reasons are stated in its opinion. (R. 113-114, 115-116.) We now consider these reasons:

It is said, first, that the Association was not "dis-established" at the time of the referendum so as to present a definite line of fracture, because Mr. Warren in acknowledging the letter did not "withdraw recognition," but merely said that he "noted"

that the Association would no longer act as bargaining agent. It is difficult to believe that when Congress passed the National Labor Relations Act it anticipated that the right of free choice given to employees would be questioned because of a quibble about a word.

The Board then says that Mr. Warren testified that he did not regard the existing contract as cancelled. His testimony makes it perfectly clear that he recognized that the Association was no longer the bargaining agency (R. 238), and it is undisputed that there was no bargaining by the Association for the employees during this period. (R. 113-114, 232-233, 238, 316-318; Board's brief, p. 38) In its letter to the Company announcing the suspension of collective bargaining, the Association said, "In the meantime, it will be presumed that the rights and privileges of your employees secured in the past by the Association will not be disturbed." (R. 317) In the light of these facts, the statement in Mr. Warren's testimony that the contract was not cancelled evidently means that the provisions of the contract governing working practices,—“Basic Work Week and Rates,” “Working Hours,” “Holidays,” “Vacations,” and “Absences”—were considered by the management to be still binding upon the Company. (See “Exhibit I to General Agreement Dated July 30th, 1940” (R. 304-307))

The real character of the remaining reason given by the Board is best shown by setting out in parallel

columns the notice which the Company at that time, and before the referendum, posted on all its bulletin boards, and the comments made by the Board in its opinion:

NOTICE

"The Company Recognizes Its Employees' Right to Join, Form or Affiliate With Any Labor Organization of Their Own Choice and Freely to Exercise All Rights Secured to Them by This Act.

The Company Guarantees Its Strict Compliance With All the Provisions of This Act and That No Employee Will Be Discriminated Against or Suffer Any Other Penalty Because of His or Her Exercise of Any Right Secured by This Act.

The Company Is Not Interested in Whether Its Employees Join or Do Not Join Any Labor Organization." (R. 113-114)

FINDINGS BY THE 'BOARD

"Indeed the respondent made no move to withdraw recognition from the Association, or to deprive it of its firmly rooted and manifold advantages in the eyes of the employees. In his February 11 reply to the Association Warren merely 'noted' that pending the canvass, the Association would not act as bargaining agent of the respondent's employees; *he did nothing which would lead them to believe that he was removing his stamp of approval from the Association and leaving the field clear for an uninfluenced expression of an opinion by such employees.*" (Italics added.) (R. 114)

In the light of all the foregoing, any presumption of continuing employer influence growing out of

support rendered before the passage of the Act must be considered as completely rebutted. To take any other view, in effect if not in words, amounts to the establishing of a rigid formula to the effect that past company influence, though long discontinued, can never be removed, and that any employee organization which was ever influenced by management can never under any circumstances be purged and qualified under the present statute.

The opinion of the Circuit Court of Appeals correctly analyzes the attitude which the Board has taken in this case. The Board, it says, has developed "a rigid formula, and standing upon its application here, insists that only by compliance with such formula can the company taint be purged, a new start made. The statute prescribes no such formula. Neither the Board nor the courts may do so. Whether an Association chosen by the employees is or is not company dominated or supported or if it began that way, has been purged of that taint, must be determined in each case on its own facts." (R. 341-342)

None of this is inconsistent with the view that the drawing of inferences is for the Board and not the courts. The courts are, however, given authority to determine whether the Board's conclusions are based on "substantial evidence."* The grant of this

* The court's authority to review the question of substantial evidence has been stated to be the same authority it possesses to pass on the sufficiency of evidence to require the submission of a case to the verdict of a trial jury. See *National Labor Relations Board v. Columbian Enameling & Stamping Co.*, 306 U. S. 292, 300.

authority carries with it a corresponding duty which cannot be pushed aside. Where such review discloses, as it does here, that the Board has drawn an inference contrary to the evidence or not reasonably deducible from the evidence, the court has both the power and the duty to set that conclusion aside.

**THE SUBSIDIARY FINDINGS ARE ERRONEOUS.
HENCE THE BOARD'S CONCLUSION OF DOMI-
NATION CANNOT BE SUPPORTED BY
THESE FINDINGS.**

We here take up certain specific findings on which the Board supports its final conclusion of domination. As heretofore pointed out, when the case is stripped of these erroneous subsidiary findings, there remains nothing on which an order of disestablishment can rest except the Board's erroneous conclusion that the Company support prior to the Act can be treated as conclusive proof of continued domination. This we have pointed out to be unsound.

It is important to strip the case of these subsidiary findings in order for the Court to have before it the ultimate question heretofore discussed. The errors in these subsidiary findings are important from another standpoint. This Court has recently, in *National Labor Relations Board v. Virginia Electric & Power Company*, 314 U. S. 469, announced a ruling that a conclusion of the Board, resting on erroneous subsidiary findings, will be vacated. In one respect the present case is very much like the *Virginia Electric & Power Company* case. In that case the Board had made an erroneous construction

of certain declarations made by management to the employees. In the case at bar the Board's final conclusion rests in part on a totally erroneous construction of the meaning and effect of the Company's bulletin of July 20, 1935.

In so far as the Board's ultimate conclusion rests on these erroneous subsidiary findings, it is impossible for its present order of disestablishment to be sustained. In so far as these erroneous findings are relied upon as additional support for the Board's main thesis that the effect of former Company support could not be removed, they are ineffective for that purpose. What has heretofore been said in this brief, however, shows that it will not be necessary, upon setting aside the order of disestablishment, to remand this case to the Board for further consideration, as was done in the *Virginia Electric & Power Company* case. In that case there were other matters in the record of sufficient importance to authorize further consideration by the Board as to whether disestablishment should be ordered independently of the erroneous findings. In the case at bar, as heretofore pointed out, with the Board's erroneous subsidiary findings eliminated, there remains nothing in the case sufficient to authorize the Board to consider disestablishment.

(a) Board's Erroneous Construction of the July 20, 1935, Bulletin, and Subsequent Bulletins.

The July 20, 1935, bulletin is shown in the record at page 284. It is entitled "Wagner Act Interpreta-

tions." The Company issued another bulletin dated January, 1937, under a similar title (R. 309-310), and a third bulletin under a similar title, dated April, 1937. (R. 310-311) The Board's discussion of these bulletins is found in its opinion. (R. 105, 108-112, 115)

The view of the Board as expressed in its opinion and repeated in its brief, is that the first of these bulletins completely destroyed the effect of the notice Mr. Warren had caused to be given to all employees of the Company's neutrality and of its intention to obey the National Labor Relations Act.

The bulletin of April, 1937, contains among other things the following:

"The Company cannot engage in any activity designed to induce or prevent its employees from joining this or any other labor organization."

"The provisions of this Act make it illegal for an employer to dominate or interfere with the formation or administration of any labor organization, and the Management of this Company should conscientiously observe these provisions." (R. 311)

Notwithstanding the clear notice given to all employees immediately upon the adoption of the Act to which we have referred, and notwithstanding the above quoted statement from the bulletin of April, 1937, the Board feels justified in saying that the Company had done "nothing which would lead them [employees] to believe that he [Mr. Warren, who

caused the bulletins to be issued] was removing his stamp of approval from the Association and leaving the field clear for an uninfluenced expression of an opinion by such employees." (R. 114)

Also, the Board, brushing away everything that the Company had done, including both the verbal notice given to all employees upon the adoption of the Act and the written notice in the April, 1937, bulletin above quoted, says:

"In February 1941, the respondent *for the first time* made an unequivocal announcement to its employees of their rights under the Act." (R. 115) (Italics added.)

From all this it is clear that the Board believes that these bulletins nullified the declarations of the Company's position and led the employees to think that those declarations were not issued in good faith.

The expressed criticism of the bulletin of July 20, 1935, is that it "announced an assumption on the part of respondent that the Association would continue to exist and function." (R. 108) The Board further says: "It is clear that the employees correctly read and understood the July 20 notice." (R. 109) While this statement is not clarified, it seems evident that the Board treats this bulletin as carrying an effective suggestion to the employees controlling their freedom of action.

The fact is that this document was merely a brief statement of what could and could not be paid for

in connection with the activities of the Association, and what use could and could not be made of Company premises and facilities. The later ones covered the same ground, but were progressively stricter in forbidding privileges to the Association. They are simple business instructions for the guidance of anybody who had to take action on those matters.

Naturally, these bulletins referred to the Association as in existence, but without any particular assumption as to whether or how long it would continue to exist or function. It is true that they gave no indication that the Company would no longer deal with the Association, but the Board could not properly attach any significance to this fact. The Company did in fact continue to deal with the Association (until the time of the balloting in 1941), and it adds nothing to observe that incidentally it issued certain instructions to regulate the details of the relationship.

Since the Association did in fact exist and did in fact contain in its membership a large majority of the Company's employees, the passage of the Act rendered it necessary for the Company to change its relations to the Association in certain respects, relations which had been legal before the passage of the Act. It was necessary to advise the Company's officers and the officers of the Association of the changes required by the Act. The bulletin of July, 1935, did this and nothing more. There is no evidence that it was distributed widely to employees at all or that it

went to anyone other than those who should receive a notice of that kind, namely, the Company's officers and the officers of the Association. (R. 235) There is not a word, nor a suggestion, in the bulletin which goes further than this.

The finding of the Board that this bulletin nullified Mr. Warren's announcement to the employees is without the slightest foundation in the bulletin itself. The error in interpreting the statement of management here presented is more glaring than the erroneous construction which the Board put on the statement of management in the *Virginia Electric & Power Company* case. In that case the management had issued a bulletin expressing its preference for the company union and this Court held such statement was not subject to the criticism of the Board. The bulletin here under criticism expresses no preference of management one way or the other.

(b) Board's Error in Finding Company Support in Certain Minor Matters.

The Board refers, in one of its headings to continuing support of the Association. While it is not wholly clear, this seems to refer to certain practices of the Company which ended early in 1937 and which were the principal subject matter of the three bulletins interpreting the National Labor Relations Act previously mentioned.

Between the effective date of the Act and the early part of 1937, the Company paid the wages of Association representatives while engaged in conferences

with the Company and while meeting among themselves just prior to such conferences for the discussion of specific matters to be submitted to the conference, and while disposing of such specific matters following the conference. (R. 200, 284, 309) Section 8 (2) of the Act specifically provides that, "An employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay." The management of the Company was advised and believed at this time that this right of the employees to conference with the employer without financial loss necessarily included the right to reasonable preparation for such conference and reasonable time to carry into effect the result of the conference. (R. 215-216, 231-232)

During this same period the Company also permitted certain wholly minor privileges to the Association. Association meetings were allowed to be held on the Company's premises without charge, but only after office hours. (R. 284, 309) The Company has always permitted employees to make a limited use of its toll lines. During this same period it permitted Association representatives to make the same use of the toll lines, but always restricted them to the same limited basis as was effective for employees generally. (R. 137-138, 284, 309)

The Company also during this time deducted Association dues from the wages of employees without charge, but only on the individual written authorization of each employee from whose wages a deduction

was to be made. (R. 241) The Company has always honored similar deductions for other purposes without charge, and employees can have deductions made for insurance premiums and the like without expense to them. (R. 241) Finally, the Company permitted the Association during this period to post some notices on its bulletin boards, and to send communications through the Company's inter-office mail facilities.

There was no discrimination by the Company in allowing any of these privileges to the Association; no other labor organization ever sought or was refused permission to do the same things. (R. 259)

The Company's practices were governed, as we have said, by the interpretations of the Act issued July 20, 1935, and represented the considered judgment of the management, arrived at with the advice of the General Counsel of the Company. (R. 216, 231) As time went on and interpretations of the Act became available in decisions of the Board, it was decided that the privileges we have mentioned were questionable. Consequently, the two bulletins issued in 1937 forbade them, and they were discontinued early in that year. The Company thereafter paid only for the time of the Association representatives spent in actual conference with management; it charged the Association a fair rate for the relatively few local meetings that were held on Company premises; it stopped the use of its toll lines (except at full tariff rates) and inter-office mail for Asso-

ciation business; it made a fair charge to the Association for the deduction of dues; and it stopped the use by the Association of its bulletin boards. (R. 111-112, 200, 260-262, 310-311) All this was done more than three years before the issuance of the complaint in this proceeding.

What had been done during the earlier period was in general accord with the prevailing view of the interpretation that would be placed upon the statute. Of this there is judicial recognition in the case of *A. E. Staley Manufacturing Company v. National Labor Relations Board*, 117 F. (2d) 868, in which the Court said:

"We do not believe when the act was enacted that laymen, or lawyers called upon for advice, could have reasonably anticipated that the loaning of a typewriter or a mimeographing machine, or the permission granted employees to meet on company premises, and like services and favors rendered by an employer, would demonstrate employer domination and thus result in an unfair labor practice." (p. 879)

A further statement in that opinion applies accurately to this Company:

"The good faith of petitioner and the fact that it, with the knowledge of its employees, eliminated such practices as soon as informed they were condemned by the Board, is another circumstance which contradicts the idea that any employer domination of the character described was carried over from the earlier to the latter organization." (p. 879)

The facts as above narrated do not show support of the Association by the Company. They show on the contrary a careful and progressive effort to ascertain the requirements of the Act and to meet these requirements without evasion—an effort which the Board itself admits was completely successful for more than three years before the complaint was issued.

(c) The Board's Error in Finding Company "Responsible" for Activities of Mrs. Wilkes, Askew, and Weil, Particularly in "Accomplishing" the Reorganization of the Association.

The Board finds that the Company was responsible for the activities of Mrs. Wilkes, Weil and Askew, especially in connection with the reorganization of the Association. The finding with respect to Mrs. Wilkes and Askew is set out in footnote 2 (R. 104). The ruling as to Weil is found in footnote 4 (R. 106). The Board in its finding states that while these three employees did not have "clear supervisory powers," their duties nevertheless more closely aligned them with management than with the ordinary employees of the Company. The only evidence with regard to the duties of the three employees is their own testimony. From this it appears:

Mrs. Wilkes was the secretary to the General Commercial Manager and Chief Engineer of the Company. (R. 104, 189) She was therefore one of a large number of women employed by the Company to do stenographic and secretarial work. She had supervision over no one.

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Weil's position was that of Plant Practice Supervisor in the Louisiana Division. (R. 106, 177) "Plant Practices" appears to be the name applied to the written directions as to plant routine practices, which are prepared in the Company's general headquarters. The duties of Weil were to distribute these written plant practices to the plant employees in Louisiana, and occasionally, if questions arose as to their meaning, to help with their interpretation. He had no one working under him or reporting to him. He had no power to hire or fire, or to recommend hiring or discharging of other employees. (R. 177-178)

Askew was the Georgia Cashier of the Company. (R. 104) His duty was to take the checks in payment of the expenses of the Georgia division of the Company and to distribute them to the proper parties. He had nothing to do with the preparation of the checks, or with the determination of what should be paid or in what amount. These checks were furnished him by the Accounting Department and his duty was to distribute them. There was an employee who helped him with his work, but this employee was responsible to and reported to the Assistant Treasurer of the Company. Askew himself had supervision over no one. He had no authority to hire or fire or to recommend with regard to employment or discharging. (R. 131)

The Board's finding, therefore, that these employees did not have "clear supervisory powers"

(R. 104, 106), to be accurate must be interpreted as meaning that they had no supervisory powers at all. The Board nowhere finds that management in fact directed the activities of these employees, or that they were in fact carrying out the wishes of management. There was no evidence to this effect in the record. The Board merely says, "It is reasonable to assume that to such employees they represented the management." (R. 104, 106)

We of course recognize that in determining the responsibility of management under these circumstances the ordinary rules of *respondeat superior* do not apply. A clear statement of the rule on this subject is found in the opinion of this Court in the *Link-Belt Company* case (311 U. S. 584, at page 599), where the Court says:

"If the words or deeds of the supervisory employees, taken in their setting, were reasonably likely to have restrained the employees' choice and *if the employer may fairly be said to have been responsible for them*, they are a proper basis for the conclusion that the employer did interfere." (Italics added.)

The *International Association of Machinists, etc.* case (311 U. S. 72) states the rule in substantially the same way. Neither case goes to anything like the extent the Board went in this case.

We can imagine a situation where management might be held responsible for the activities of non-supervisory employees, even though such activities

had not been authorized or consented to by management. This could only arise, however, where (1) the other employees supposed that such non-supervisory employees were in fact reflecting the wishes of management, and (2) this erroneous supposition arose from circumstances for which "the employer may fairly be said to have been responsible," and (3) the employer did nothing to disabuse the minds of the employee body generally of the belief that the wishes of management were in fact being reflected. Unless something of this kind were shown, however, it is not possible to say that management is responsible for what its non-supervisory employees do in the exercise of their rights under the Act.

With regard to such a situation the Second Circuit has said, in *National Labor Relations Board v. Arma Corporation*, 122 F. (2d) 153:

"There was no evidence that the officers or supervisory employees consented that key men should represent the views of the corporation, or gave the other workmen reason to suppose that the key men worked for Independent in order to please Arma. If the latter had interfered with the labor activities of the key men, except to prevent canvassing during working hours, it surely would have been guilty of an unfair labor practice and would have deprived these men of rights guaranteed under Section 7 of the National Labor Relations Act, 29 U.S.C.A. §157." (p. 156)

The activities of the three employees in this case upon which the Board lays stress are in connection

with the reorganization of the Association in the latter part of 1935 and the early part of 1936. As these events afford a good example of the divergence between the findings made by the Board and the reality of the facts shown in the record, we shall present them in some detail. They relate in part to internal affairs of the Association with which the Company had nothing to do, but since responsibility for them is attributed to the Company, we know of no way to meet this accusation except by showing what actually occurred.

Before the Act was passed the Association had raised a fund to carry it over until it could become self-supporting, against the contingency, which might or might not occur, that Company support would be forbidden. (R. 123, 132) The record contains no evidence, nor even a hint, that this move was inspired by the Company. The President of the Association, after consulting with other leaders in the organization, notified Mr. Dumas, Assistant to the Operating Vice President, that the Association wanted to conduct a canvass to raise funds, and in accordance with existing arrangements covering all Association activities, the employees were allowed to do this on Company time and with the use of Company facilities. (R. 124-125, 212-213)

At this time Askew was President of the Association. The Board finds him to have been "allied" with management, so regarded by the employees, and at this point "initiating the movement" for which the Company was "responsible." (R. 104) If this were

true, Askew might be expected either openly to guide the course of the Association at this critical juncture, or at least quietly to manipulate its movements in order to accomplish certain designs of the Company, "in accordance with the latter's own manifest wish." (R. 109)

The statute was enacted on July 5, 1935. On July 12 Askew wrote to the officers and members of the Association (R. 269) asking for suggestions as to how the Association should deal with the problem presented by this new legislation. Should it be re-organized? "I think careful consideration should be given to this question and each local should decide by a vote of its members what kind of an Association we should have. * * * In the event a reorganization is decided upon another question which our members must decide is the method by which this shall be accomplished." (R. 271) He suggested for their consideration two methods,—(a) the locals and divisions to meet and prepare their views for presentation to a meeting of the General Assembly, the governing body, or (b) a small committee to be chosen to study the problem and make recommendations to the Assembly. (R. 271) Thus, instead of proposing some plan desired by the management, Askew appears undecided upon what to do and how to proceed to do it. He submits both questions to the rank and file of the membership for advice. The Association had 354 locals. (R. 191, 315)

On August 1 Askew wrote to the members of the General Assembly upon the same question. (R. 272-

273) He now proposed that a small committee be constituted, to consist of the four general chairmen, the President (himself), and the General Secretary of the Association. This recommendation was not accepted. Instead, the members of the Assembly, voting by their major divisions, elected by ballot a committee of four members. (R. 128, 185)

The small committee met at Atlanta on August 26, preceding the meeting of the Assembly on August 30, and worked during the intervening days and evenings. Differences of opinion had arisen between Askew and the committee members. Because of this, the committee excluded him from its deliberations. He made persistent efforts to enter the meeting and had to be asked to leave twice. He was only allowed to present the suggestions for reorganizing the Association which he had received from the locals and divisions in response to his letters. (R. 128, 182-183)

The committee, in the light of the recommendations received from the constituents, redrafted the constitution of the Association and negotiated a proposed contract to govern future relations with the Company, both to become effective on February 1, 1936, if the constitution was adopted by the Assembly and thereafter ratified by the locals. The only contact the committee had with the management of the Company was in discussing and negotiating the proposed contract with Mr. Dumas, Assistant to the Vice President. (R. 143-144, 148-149, 181-183, 213)

The problem was now before the General Assembly, a body of thirty-five representatives chosen from members in all departments of the Company throughout the whole territory. It convened at an Atlanta hotel without a leader. Askew called the meeting to order, tendered his resignation and immediately withdrew. He did not attend the sessions of the Assembly and never held office afterwards in the Association. (R. 129, 136, 144-145, 275-276)

So much for the Board's theory of the "strategic position" of Mr. Askew "to translate to the employees the desires of the respondent." (R. 104)

Weil was not employed, like Askew, at the Company headquarters at Atlanta; he was located at New Orleans. (R. 140) Although he was Vice President of the Association, he refused to fill by default the vacancy in the office of President. He asked for a vote of confidence and withdrew from the meeting until the Assembly elected him President to succeed Askew. (He held that office thenceforth until April, 1939.) (R. 144-145, 276)

The Assembly sat continuously over the Labor Day week-end from Friday through Monday. Upon its invitation, Mr. Dumas addressed the meeting. In the course of his remarks he informed the members that the management of the Company would insist on meeting the provisions of the new law to the letter, and that it approved of the objectives and policy of the law. (R. 214, 279) Mr. Warren's fuller state-

ment of the Company's position had already gone out to the general body of employees.

Weil, reporting to the Assembly the results of the work of the small committee, said that all suggested plans and amendments to the constitution had been considered, and the committee had endeavored to formulate a plan acceptable to all. (R. 280) With copies of the new constitution in the hands of all members, it was read and considered, section by section. Amendments were offered, discussed and voted upon, the details of which do not appear in the record. Upon the final motion for adoption there were negative votes. (R. 280-281, 187, 255-256) The proposed joint agreement with the Company was also discussed. Like earlier agreements of the same sort, it contained a provision binding the Company not to discriminate against any employee because of activity in bargaining or grievance matters. (R. 278, 285-286) Finally, the Assembly adopted a resolution assessing regular dues and providing for a special committee to handle finances until the new constitution should be ratified by the membership. (R. 252-253, 282, 334-335) In the minutes of these important proceedings there is nothing to suggest that Weil or any other member dominated or influenced the others. (And see R. 178, 179, 183)

The new constitution and the resolution to assess membership dues were submitted to, and ratified by, the locals. Some locals voted in the negative. (R. 291, 315) The constitution was sent out in printed form,

together with the new joint agreement with the Company, for distribution to the members, and there was also sent a careful and detailed discussion of the many new provisions and the reasons therefor. (R. 295-300)

Weil and Mrs. Wilkes, the General Secretary, sent out several letters reporting on the situation and discussing plans. On September 3, in a letter to all members, Weil wrote: "The committee earnestly endeavored to take into consideration the recommendations submitted by you and I sincerely believe that you will feel as this Assembly has felt—that, while the plan is not perfect, it is a base on which to work and that you will back your leaders and our Association until it is perfected." (R. 287) Elsewhere in the same letter he says that "we are going through more or less uncharted seas." (R. 287) In a letter to all local chairmen about finances, he wrote on September 11, "Folks, we are having to feel our way and you must try to persuade your people to be patient." (R. 290) Can it really be supposed that the writer of these letters was regarded by the employees as one whose activities were designed to "translate" to them the desires of the management of the Company about their Association?

A membership canvass was now conducted; new applications were required to be made for membership in the reorganized Association. Signatures were secured upon membership cards and individual authorizations for the Company to deduct Associa-

tion dues from the pay of employees. There is no suggestion in the record that this was done on Company time, or premises, nor indeed that the Company supported, directed, or interfered in any way with any of the proceedings we are relating. (R. 107, 178-179, 211)

The Assembly met for the first time under the new constitution on February 17, 1936 (Board's Exhibit 16), supported by a fresh mandate from the constituents in the form of 12,264 membership signatures. (Board's Exhibit 16, p. 12) The new constitution had been ratified, but the continuing and spontaneous interest of the members in the reorganization problem is strikingly shown by the proposals submitted at this session for further amendments to the constitution. Thirty-one amendments were proposed, originating from divisions or locals in Georgia, Florida, Louisiana, the Carolinas, Kentucky, Alabama, Tennessee, from the General Executive Board (three), and from individual representatives. Twelve were adopted; nineteen were rejected or withdrawn.

The minutes of this and subsequent sessions of the Assembly and of the meetings of the General Executive Board and of important bargaining conferences with the Company management, appear at length in the printed series of annual proceedings of the Association (Board's Exhibits 16, 19, 27, 28, 29) These are books of some size; unfortunately, it is impracticable to include them in the printed record before

this Court, and impossible to convey in this brief the conviction they establish in the mind of the reader of the spontaneous and uncontrolled character of the organization, both in its internal workings (of which some hint can be found in what we have presented here) and in its negotiations with the management of the Company.

We have given here, without the administrative and business features of the reorganization, and necessarily devoid of the essential human color, a brief outline of the way this Association reorganized itself to become independent of Company support. This is what the Board has characterized as "minor revisions" "accomplished by Askew, Weil and Wilkes," on account of whose leadership, "coupled with substantial continuity of existence," the Board draws the conclusion of "continued domination by the employer." (R. 115).

The record cannot be distorted to support such a finding. A fair reading of the documents we have cited and of the testimony will show that the Association moved in the matter with complete independence, that it was organized and functioned on highly democratic lines, and that its officers acted as responsible and responsive only to their own members. Proposals for action originated mostly with the divisions or locals, decisions were made by the thirty-five members of the General Assembly, important matters were referred back to the locals for ratification, full records of what was done were sent out for the infor-

mation of the members. The Association was dominated by nobody, certainly not by Askew, who was not followed; nor by Weil, as he "felt his way" through his "more or less uncharted seas" (R. 287, 290); nor by Mrs. Wilkes, with her Treasurer's reports and her "folksy" letters urging the "ladies and guys" to get new members and to authorize deductions of dues. (See Board's Exhibits 37 and 38) This record tells a different story from the one the Board has built up; it is a story of people who, however they may have differed in their methods from a certain type of union leaders, were stoutly and freely establishing their own organization according to their own wishes, and devoting it to the advancement of their own interests, fearlessly and controlled by nobody.

**(d) Board's Error in Finding "Other Interference,
Coercion and Restraint."**

Under a caption containing these terms, the Board deals with the Shreveport incidents which occurred in the latter part of 1940. As heretofore pointed out, these consisted of an unauthorized remark by the local traffic manager, which was promptly repudiated by the General Traffic Manager, and a single ambiguous sentence by an employment supervisor, which is interpreted as hostile to the complaining union.

Mason, the local traffic manager at Shreveport, asked Mrs. Sibley, one of the supervisors,* to use her

* A supervisor in a telephone exchange is, in effect, an operator, and is not a supervisory officer. This has been heretofore recognized by the Board itself, in *The Matter of*

influence with the operators against the I. B. E. W. Mrs. Sibley testified to this, and testified that she spoke to two operators in response to this request. (R. 207-208) Mason's action was contrary to the Company's policy and to his own instructions. It was promptly repudiated and corrected. The General Traffic Manager thereafter reminded the Shreveport manager of the Company's fixed policy of neutrality in such matters, and instructed him to use great care to see that this policy was followed. (R. 243-244) Mason then called in all supervisor operators, including Mrs. Sibley, and instructed them that the Company wished to be absolutely neutral in the organizational contest. There is no dispute about this, and in fact Mrs. Sibley herself so testified on cross-examination. (R. 208-209)

The other occurrence is a conversation between Mrs. McCain, who was an employment supervisor at Shreveport, and one of the operators. An election was being held at the time by the local Association, and there was a contest for officers of the Association. (R. 204, 247) Mrs. McCain inquired of this operator as to which side she was on, and added, according to the operator, that it was a shame they could not fire the old dissatisfied employees. (R. 204) Mrs. McCain's testimony is that she was referring to the contest for officers in the Association and not

Wisconsin Telephone Co., 12 NLRB 375, where the Board says: "They do not have supervisory powers over operators and do not possess disciplinary powers or the right to hire and discharge. They are not to be confused with employees designated as supervisory employees."

to the organizational contest between the Association and the I. B. E. W. (R. 247, 249, 250) She denied making the statement about dissatisfied employees, but the Board found that she did make the statement. (R. 247, 117)

This is all of the incident.

The Company operates over nine hundred telephone exchanges, and has about 20,000 employees eligible for membership in labor organizations. (R. 221) The Shreveport incidents involved four employees at that office. The incidents are so obviously trivial, so wholly unimportant in relation to the entire activities of the Company and its whole body of employees, so obviously contrary to the Company's policy, and so promptly corrected to the extent that they could have come to the notice of the management, that the significance attached to them by the Board reflects the complete lack of any real evidence of Company interference in this case.

The Board makes them the subject matter of a special finding as follows:

"We find that the respondent, by the statements and acts of Mason, Sibley and McCain, described above, has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act." (R. 118)

In dealing with the action of the Traffic Manager in reprimanding the local manager at Shreveport

for what he had said to one supervisory operator, the Board remarks:

"However, there was no showing that the traffic manager's reprimand of Mason was ever made known to the general body of employees at Shreveport." (R. 117)

There is no evidence that the general body of employees at Shreveport knew anything about Mason's conversation with Mrs. Sibley, or indeed that anybody ever heard of it except the two operators to whom the supervisor spoke. Indeed, however, within a very few months thereafter, the February, 1941, bulletin of the management was posted on all bulletin boards, which in the most sweeping terms again declared the Company's neutrality in labor matters.

We know of no way to show the utterly trivial character of these Shreveport incidents, viewed in the light of the wide organization of the Company, except by narrating the facts. The Board, however, has magnified them into an important subsidiary finding of interference and restraint supporting its final conclusion of disestablishment. The interpretation which the Board has placed upon the matter cannot be supported, we submit, as a reasonable inference from the evidence.

CONCLUSION

The foregoing argument has been directed to the part of the Board's order which requires the Company to withdraw recognition from the Association

and to cease to give effect to any contracts made with it. While the Board's order requires certain other things, none of them are of vital importance. The Company is ordered to cease and desist from dominating or interfering with the Association, from giving it financial or other support, and from interfering with or coercing its employees in the exercise of their rights to self-organization. Inasmuch as the Company did desist from these things as soon as the Act was passed, compliance with that part of the order is easy and is, indeed, being met. These provisions of the order, therefore, seem unwarranted and inappropriate, as does also that part of the order requiring the posting of notices of compliance.

As to that part of the order directing the disestablishment of the Association, we have sought to show that this action of the Board is based upon a finding of domination and interference on the part of the Company which is not supported by substantial evidence, but is contradicted by undisputed evidence. The record of this Company's compliance with the National Labor Relations Act shows that the Company is not interested in what form of organization its employees adopt. The Association has been freely chosen as the representative they desire, by more than 80% of the eligible employees. They were not coerced, intimidated, seduced, or influenced in any way to make that choice. If this provision of the order stands, the wishes of these people are to be overridden and their decision set at naught. The duty imposed by law on the Company to respect the wishes

of the employees by bargaining collectively with the agency they have chosen cannot be performed. Organized labor relations between this Company and its employees will come to a halt.

The Company's operations provide a public service which is essential at all times, and which is at the present time vital to the nation's war effort. The facilities of the Company and the efforts of the employees are now taxed to the utmost to provide the communication service so necessary to the prosecution of the war. The efficiency of the service depends to an unusual degree upon the morale of the great body of employees. An impartial reading of the record in this case shows with certainty, not only that the employees of this Company have the labor organization which they desire, but that they are fully satisfied therewith and with its efficient working. To destroy this organization, freely chosen by the employees themselves and through which they have negotiated with the management and have presented their demands and grievances, will inevitably lead to uneasiness, unrest, and dissatisfaction: It cannot promote industrial peace; it can only cause disturbance. This is a matter of deep concern, particularly at a time when this nation's war effort in the southeastern states is so largely dependent upon communication service. In the difficult conditions under which telephone people are performing their important duties today, they should be spared the problems and worries involved in doing again the job of organizing for collective bargaining. This is merely a realistic

application of the declaration in the first section of the National Labor Relations Act, that the denial to employees of the right to select their own organization for collective bargaining will lead to "industrial strife or unrest * * * burdening or obstructing commerce by impairing the efficiency, safety, or operation of the instrumentalities of commerce."

The action of the Circuit Court of Appeals in denying enforcement of the whole order was correct and should be affirmed.

Respectfully submitted,

✓ MARION SMITH

S. B. NAFF

T. BROOKE PRICE

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*Attorneys for Southern Bell
Telephone and Telegraph
Company:*

Atlanta, Georgia
February, 1943

APPENDIX

Pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Title 29, Sec. 151, *et seq.*) are set out below:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

• • •

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. • • •

• • •

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

. . .

(f) * * * the findings of the Board as to the facts, if supported by evidence, shall * * * be conclusive.

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 460

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY

No. 461

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

SOUTHERN ASSOCIATION OF BELL
TELEPHONE EMPLOYEES

BRIEF OF SOUTHERN ASSOCIATION OF
BELL TELEPHONE EMPLOYEES.

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In this brief Southern Association of Bell Telephone Employees will be referred to as the "Association". Southern Bell Telephone and Telegraph Company will be referred to as the "Company".

The real parties most vitally interested in the ultimate result of this case are the approximately 20,000 non-supervisory employees of the Company located in the nine states where the Company operates. These employees claim, and are earnestly seeking, the right to be represented in their relations with the Company by the organization of their own choosing. They have repeatedly expressed and demonstrated their fixed desire and purpose not to be compelled to join, or affiliate with, one of the great national labor organizations¹. There are approximately 20,000 employees of the Company in the nine states where the Company operates who are eligible as members of a labor organization (R. 221)².

Of these, approximately 17,500 are members of the Association (R. 257). These employees have, since immediately after the passage of the Act, repeatedly expressed their choice of the Association as their bargaining agency. They intervened in this case, and are here now, for the purpose of seeking in every possible legitimate way to be accorded the right to be so represented. If they are to be denied this right it must, in the final analysis, be either on the theory (1) that they were not suf-

¹ This applies to the American Federation of Labor and Congress of Industrial Organization. The Association is now affiliated with the National Federation of Telephone Workers, which is a recognized labor organization composed, in the main, of employees of telephone and communication companies. This affiliation has been completed since the decision of the Circuit Court of Appeals in this case was rendered.

² The Company operates in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, and Kentucky.

ficiently intelligent to understand their rights after they were informed of them; or (2) that they were always under such coercion as not to be able to give free expression to their wishes. The evidence, when fairly considered, supports neither theory. It affirmatively refutes both. The employees and their Association are not concerned with the question what, if any, remedial measures may be meted out to the Company for any infraction by it of the terms of the Act so long as those measures do not go to the extent of depriving the employees of their rights to self-organization to be represented by the agency of their own choosing. The order of the Board, if allowed to stand, would, we submit, result in the complete denial to the employees of the very rights guaranteed them by the Act. It would amount to visiting the sins or mistakes of the employer upon the innocent employees. The only practical result of this would be to compel these employees to undergo the hardship and expense of a new campaign of organization, and that at a time when their services and all of their time are sorely needed to maintain the vital services being rendered by them³.

It has been demonstrated, and we can confidently assert, that these employees will not be organized by, or become affiliated with, the union which is the sole instigator of this case. They will,

³ The difficulties and expense and hardships that would be incident to a campaign of organization in this case would be much greater than would be involved in the ordinary case. This is true because of the fact that the employees are scattered over such a large territory, and it is especially true at this time because of the difficulties incident to travelling.

if it is possible for them to do so, have their own organization. This Court has said that employees are entitled to this right.*

Certain cases before the War Labor Board (which proceedings are within the judicial cognizance of the Court) illustrate the development of labor unions in the telephone field and their independence. They are:

In the matter of Ohio Bell Telephone Co., and Ohio Federation of Telephone Workers, Incorporated, Case No. 337, decided November, 1942.

In the matter of Diamond State Telephone Co. and United Telephone Plant Workers of Delaware, Case No. 366, decided December 28, 1942, reported in 11 Labor Relations Reporter 563.

In the matter of Western Electric Co. and Western Electric Employees Association, Incorporated, Case No. 89, decided April 16, 1942.

In the latter case a paragraph in the report of the Mediation Panel, afterwards adopted by the Board, follows:

"The Western Electric Employees Association, Kearny Area, is an independent union. It is affiliated both with the National Committee of Communication Equipment Workers, which

* "An 'inside' union, as well as an 'outside' union, may be the produce of the right of the employees to self organization and to collective bargaining 'through representatives of their own choosing', guaranteed by §7 of the Act. * * "

National Labor Relations Board v. Link-Belt Co.,
311 U. S. 584, 587.

represents the six independent unions in the Western Electric group, and the National Federation of Telephone Workers, to which are attached a majority of the independent organizations in the Bell System."

In the Ohio Bell Telephone Company case the report of the Mediation Panel, afterwards adopted by the Board, contains the following statement:

"The Ohio Federation of Telephone Workers Incorporated, is one of thirty-eight organizations forming the National Federation of Telephone Workers."

These cases show a development in the Telephone Labor field similar to that which took place many years ago in the Railway labor field. The unions of employees in different areas have now become nationally affiliated and constitute now a national organization of telephone workers. The vigor of their contest with management, as reflected in these Labor Board cases, illustrates their complete independence and shows that any claim that they are company dominated is wholly imaginary.

This case is unusual, and perhaps unique, in that the charges and complaint did not originate or grow out of any dissatisfaction on the part of the employees, or out of any friction or dispute between the employees and the Company. It originated with the filing of a complaint by the professional labor organizer, and obviously because of his desire to organize the employees into the union represented by him. The acts complained of, and which form the basis of the complaint, had occurred some three to five years prior to the filing

of the complaint (see note 1 to the decision of the Circuit Court of Appeals, R. 337). While it is not questioned that the Board and the courts may take into consideration, along with all of other facts and circumstances of a case, evidence of past acts of employer domination or support in determining whether a given organization is one which should be recognized as a legitimate bargaining agency, it is submitted that where the undisputed and uncontradicted evidence shows that such domination or support, if it ever existed, was so minor as to be almost negligible and where, as in this case, it had entirely ceased for some three years before the filing of the complaint, the purposes of the Act are not fulfilled by withdrawing from the employees the right to be represented by their chosen organization where the evidence, as in this case, demonstrates that such choice has been expressed or reiterated long after all unfair labor acts of the employer have ceased.

There is not in this case, as there was in those cases decided by this Court upholding the Board in disestablishing so-called "inside" or Company unions, such as, for example, *National Labor Relations Board vs. Link-Belt Co.*, *supra.*, and similar cases, any evidence of hostility of the Company toward outside labor organizations, or favoritism, or partiality toward an inside union, or acts of intimidation or coercion, or the employment of labor spies. On the contrary, the evidence, without conflict or contradiction, demonstrates that the Company has never been guilty of any such conduct, and that it was never guilty of any act or conduct justifying a claim that it sought to discrimi-

nate against any union or organization, inside or outside. This is true, with the sole possible exception of the acts alleged to have been committed by minor officials and supervisory employees at Shreveport, Louisiana, just prior to the filing of the charges out of which the complaint in this case grew, and the evidence is without dispute that the Company not only did not authorize such acts and conduct, but promptly repudiated the same.

History of the Association

The original Association bearing the same name as the present one was organized in 1919. It was supported financially by the Company. It had no regular established roll of membership, and there was no uniform practice of even requiring any application to be made for membership therein. There were no dues required of, or collected from, the members. When it became apparent that the Labor Relations Act would be adopted, and before it was adopted, some of the employees who were interested in the then Association, with the consent and approval of the Company, undertook to raise funds by voluntary contributions from the employees of the Company, whether members of the then Association or not, in order to be in a position to reorganize the Association when the Act should become effective.

The Company permitted certain of its employees, at their request, to solicit such contributions while working on Company time, and in some instances, while using Company automobiles. This was all done before the Act became effective. It was not then illegal for the Company to do this.

There was raised by such voluntary contributions approximately \$5,000. The contributions were fifty cents each from such of the employees who contributed. After the Act became effective, and after the present, or reorganized, Association came into existence under the new constitution effective February 1, 1936, every one of these contributions was refunded to the employees who had made them, the refund being made by the Association from funds raised from dues paid by the members of the reorganized Association (R. 135; 184). The obvious reason why the Association refunded these contributions was to remove any basis for the claim that the Association as reorganized was being financed, in whole or in part, by the Company, or from funds to which the Company had indirectly contributed. This, in itself, is, we submit, evidence of the purpose and determination of the employees to exercise their rights under the Act and to be free from Company domination or support.

The old Association which had existed prior to the passage of the Act had as its President one Mr. Askew, who occupied the position of Cashier of the Georgia Division of the Company. It was his duty to distribute salary and pay checks to the employees. He had no authority to hire or fire anyone, and had no supervisory authority over any employee. Askew believed that the old Association under its then structure and set-up should be retained, and that the only change that should be made was to provide for the collection of dues with which to finance the operations of the Association. Other employees, who took the initiative

in the formation and adoption of an entirely new constitution, did not agree with Askew's views. They were insistent that an entirely new constitution should be adopted (R. 136; 139; 182). As will be pointed out in more detail hereafter, Askew's views were not accepted, and as the result of his insistence on his views being carried out, he was eliminated as President of the old Association, and he was not allowed either to appoint the committee of employees who were to formulate the new constitution (R. 185), or to participate in any way, or even be present, while this committee of employees were formulating and compiling the new constitution (R. 182). In this connection attention is directed to the finding by the Trial Examiner (R. 54), and adopted by the Board (R. 104), to the effect that Askew was largely responsible for initiating the movement for a "new Association". This finding overlooked, or ignored, the undisputed facts to which we have called attention just above.

Within a few days after the act became effective, J. E. Warren, then Vice President of the Company in charge of Operations (the President being incapacitated by illness), called a meeting of department heads of the Company for the purpose of explaining to them the terms of the Labor Relations Act, and instructing them as to the policies of the Company with respect thereto. The meeting was held on July 16, 1935, and was attended by the heads of the departments throughout the territory. At that meeting Warren read the provisions of the Act and explained the meaning thereof, and stated that it would be the policy of the Company to faith-

fully comply with the letter and spirit of the Act. He instructed these department heads to communicate this information and these instructions to their subordinates and, through them, to all employees of the Company. It was stipulated on the hearing before the Trial Examiner that these instructions from Warren were complied with (R. 245-6). Shortly after this meeting, in August 1935, a committee, who had been selected by the employees for that purpose, met in Atlanta for the purpose of formulating a new constitution for the Association and plans for submitting such new constitution to the employees. The employees, including the members of the committee, had been informed of the occurrences at the meeting held by Warren, and they had been furnished copies of the Act (R. 179; 180). Without the assistance of an attorney, the members of this committee undertook to, and did, compile and prepare an entirely new constitution (R. 163; 256). It is true that the new constitution embodied some features of the old constitution. The method adopted by these laymen was to take excerpts from the old constitution and from constitutions of other similar organizations, and put them together so as to compile an entire constitution from beginning to end (R. 181-182). They did not undertake to, and did not propose amendments to an existing constitution (R. 179; 188; 255).

It was not claimed, and there was no evidence to the effect, that any officer or supervisory employee of the Company had any part whatever in the preparation of the new constitution; there is positive evidence to the contrary (R. 183).

After the new constitution had been prepared by this committee of employees, it was then submitted to a larger committee composed of those who had been members of "the General Assembly" of the old organization, being employees from all the different sections and divisions covered by the Company's operations. These members of the "General Assembly" were each furnished a copy of the proposed new constitution, and it was gone over, section by section, and discussed and debated (R. 255-6; 281). Following this, the proposed new constitution was submitted through the old locals of the old organization to the employees throughout the territory. It was to become effective February 1, 1936. It was adopted, or ratified, by the employees through these locals; and did become effective February 1, 1936. There was also submitted with the proposed new constitution a tentative proposed agreement between the Association and the Company, which was to become effective February 1, 1936, simultaneously with the effective date of the new constitution. The proposed new constitution and this agreement were submitted together, under one cover, the cover having upon it the words: "Constitution and Joint Agreement between Management and Employees Association as to Procedure Amended by Special Session of General Assembly, September 1935, and effective February 1, 1936" (R. 181).

The committee of employees, realizing that funds would be required with which to defray the expenses in the interim before the effective date of the new constitution, proposed and submitted to

the employees, through the old locals, a resolution (known as "Resolution No. 1"; Association Exhibit 7), reciting, among other things, "Whereas the passage of the Wagner Labor Relations Bill prohibits Southern Bell Telephone and Telegraph Company from further contributing to the financial support of the Association to any degree, and the Association is threatened with impairment, an emergency is declared to exist." The resolution provided that "pending the adoption of the revised constitution, there be authorized an assessment of dues of ten cents weekly for each male member, and five cents weekly for each female member." The resolution also provided that the President of the Association be authorized "to negotiate with the Management for the collection of the above dues by means of salary deductions." It also provided for a temporary committee to develop rules and regulations for the handling of the funds in the interim until the new constitution could be adopted (R. 334; 335).

It is abundantly clear from the record that the employees, in good faith and without any participation or influence on the part of the Company, undertook to, and did, formulate and adopt an entirely new constitution. It is true that this constitution embodied many provisions that had been contained in the old constitution, but there were many new features, perhaps the most important of which was the one providing for the General Executive Board, and giving it very broad powers regarding matters of vital concern to the employees. The representatives of the employees who met and formulated the new constitution were

fully cognizant of the fact that the employees had the right to self-organization, and that the Company had no right to support, dominate, or interfere with any organization which the employees might choose to adopt. Their conduct, as shown by the evidence, demonstrates that they so understood, and they were determined to exercise these rights and privileges. The minutes of that meeting show clearly that they so understood (Board's Exhibit 8; R. 275; 283). It is true that the framework of the new constitution was somewhat crude in many respects, but it should be remembered that these people were not lawyers, and were not skilled in drawing legal documents. The substance of what they embodied in the constitution was what they wanted and was sufficient to accomplish the desired results. The important thing is that what they actually did was, in effect, to abandon the old organization and set up a temporary organization for the limited purpose of handling the finances until the new organization could come into existence, and that the new organization did come into existence by the adoption of an entirely new constitution.

The Association has functioned as the bargaining representative of the employees from February 1, 1936 until the present time, with the exception of a period in the early part of 1941, when it voluntarily relinquished this right pending a referendum. This will be referred to in more detail hereafter. During the period February 1, 1936, to date of the hearing before the Trial Examiner, the Association, as the bargaining agency of the employees, accomplished results satisfactory

to the employees (R. 186; 187; 222; 225; 227; 315; 316). There is no contention that the representation of the employees by the Association was not effective, or satisfactory. Indeed, the whole theory of the Board's case was, and is, that because of the fact that the present Association was the outgrowth of the old one, and because it bears the same name as the old one, it cannot be regarded as a legitimate bargaining agency for the employees.

The 1941 Referendum

The first intimation that anyone connected with the Association had to the effect that there was any doubt or question as to its being a legitimate organization, entitled to act as the bargaining representative of the employees, was in the latter part of 1940, when an organizer of the IBEW undertook to organize a local for that union at Shreveport, Louisiana. Being unsuccessful, he filed charges with the Regional Director of the Board at New Orleans, Louisiana (R. 17; 18). Having learned of these charges, the General Executive Board of the Association, on February 10, 1941, notified the Company that pending the vote of the membership the Association would cease to act as the bargaining representative of the employees (R. 316). The Company, through its President, acknowledged receipt of this notice on February 11, 1941, stating, "It is noted that, pending a canvass of your members, you will not undertake to represent the employees of this Company as their collective bargaining agent." Following this, the Association, through its locals, notified the employees generally of this action, and that pending the re-

sult of the balloting the Association would not undertake to act as the bargaining agency of the employees. Arrangements were made with a firm of certified public accountants in Atlanta, to receive and to compile the ballots, and to certify the results. Ballots were prepared and sent to all members of the Association. The form of ballot was as follows (R. 324):

"NOTICE

"THIS BALLOT MUST BEAR THE SIGNATURE OF THE MEMBER VOTING AND SHOULD BE SEALED AND RETURNED IMMEDIATELY

"Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? Answer: Yes () No ().

"Do you desire to continue your membership in Southern Association of Bell Telephone Employees? Answer: Yes () No ().

.....
(Signature)

.....
(Date)

"(In accordance with association practices do not distribute during working hours.)"

The result of the ballot, as certified by the firm of certified public accountants (R. 332-333), was:

"15,356 members answered 'Yes' to these questions:

"Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? Do you desire to continue your membership in Southern Associa-

tion of Bell Telephone Employees?

"95 members answered 'No' to this question: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? and answered 'Yes' to this question: Do you desire to continue your membership in Southern Association of Bell Telephone Employees?..

"170 members failed to answer this question: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? and answered 'Yes' to this question: Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

"165 members answered 'Yes' to both of these questions, but failed to sign their ballots: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

"16 members answered 'No' to both of these questions: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

"23 members answered 'Yes' to this question: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? but failed to answer

this question: Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

"64 made various remarks or failed to properly answer the questions asked by the ballots.

"80 ballots mailed out were returned undelivered."

In the meantime, after the Association had, on February 10, 1941, notified the Company of the intention of the Association to take the referendum, the Company issued, and caused to be posted throughout the territory at 2,173 places, a notice as follows (R. 318; 319):

**"SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY, INCORPORATED**

HURT BUILDING

Atlanta, Georgia, February 11, 1941

**"TO ALL GENERAL OFFICERS, STATE
HEADS, DISTRICT HEADS, GENERAL
AND STATE STAFF HEADS:**

"There is herewith enclosed to each of you copy of letter received by the Company from the Southern Association of Bell Telephone Employees, of date February 10, 1941, and copy of the reply of the Company of date February 11, 1941.

"From this correspondence it appears that the Southern Association of Bell Telephone Employees is to canvass its members by ballot, and that another labor organization is undertaking to organize certain of the employees of this Company; also you will note that, pending the canvass of its members, such Association will not undertake to act as the col-

lective bargaining agent of the employees of this Company.

"You are therefore advised as follows:

"1. You are directed and you should immediately instruct all supervisory personnel under your jurisdiction in no wise to interfere with any activities of the employees or of any labor organization or union, or in any way advise with such employees with reference to any labor organization activities, or influence any employee to join or not to join a labor organization, or as to the kind or type of labor organization which the employee or employees should or should not join, assist or become affiliated with.

"All employees have an unqualified right, under the National Labor Relations Act, to exercise their free and uninfluenced choice in such matters.

"2. The enclosed notices, directed to the employees of this Company, are to be posted in every Company building, whether owned or leased, on all bulletin boards therein where available, and where not available, in a prominent place therein.

"3. The individual posting these notices will sign at the place provided thereon, stating his or her title and noting the date and hour of posting.

"4. The individual posting these notices will, in writing, advise his or her immediate supervisor of his or her action in so doing.

"Yours very truly,

"(Sd.) J. E. Warren,
President."

After the result of the balloting had been certified by the firm of certified public accountants, the Association demanded of the Company that the Company recognize the Association as the bargaining agency of the employees, and the Company, on March 3, 1941, in reply to that demand, called upon the Association to furnish certain information, including a copy of the ballot, copies of any letters that had been sent to the employees of the Company relating to the ballot, and an affidavit of a responsible member of the firm of certified public accounts, showing the manner in which the ballots were received, tabulated, and counted, and the results. This information was furnished and thereafter the Company recognized the Association as the bargaining representative of the employees (R. 319 to 334).

The Board's Subsidiary Findings, upon which its Ultimate Conclusion of Company Domination is Based, are not Supported by any Substantial Evidence but are *Refuted by the Uncontradicted Evidence*.

Subsidiary findings by the Board upon which, to a large extent, it bases its "concluding findings" are:

1. That Askew and Wilkes, while not having clear supervisory powers, "occupied a strategic position to translate to the employees the desires of the respondent," and that the respondent was responsible for the activities of Wilkes and Askew in conducting a canvass for the contributions and in initiating the movement of a new Association (R. 107);

2. That the same things were true as to Weil (R. 106);

3. That it was the "manifest" wish of the Company that the old Association as it existed prior to the passage of the Act should be continued unchanged "except for concessions respecting its more obvious financial support by the respondent" (R. 109);

4. That the employees, in reorganizing the Association and in expressing their choice as to their bargaining agency, were acting under the "impact" of the Company's influence.

In *National Labor Relations Board v. Virginia Electric Power Co.* 314 U. S. 469, this Court held, in effect, that where an order of the Board is based upon subsidiary findings not supported by evidence, such order of the Board will not be enforced. It is on this principle that we urged that the erroneous and unsupported findings above enumerated vitiate that part of the Board's order to disestablish this Association.

1. *The Board's finding that the Company was responsible for the activities of Wilkes and Askew in connection with the reorganization of the Association, and the Board's assumption that the employees were led to believe that Wilkes and Askew were translating the desires of the Company are wholly without support in the evidence.*

As we have pointed out heretofore in this brief, Askew was not even permitted by the employees to have any part in the formulation of the new constitution in August and September, 1935. He attempted to inject himself into those proceedings, but his views which had previously been expressed to the effect that the old constitution and the old organization should be retained with changes merely to provide for financing it from dues, had

not met with the approval of the employees and had been definitely rejected by them. He was not permitted to name the representatives forming the small committee who outlined the framework of the new constitution although he had suggested that he be permitted to do so. This small committee was elected by the General Assembly of the old organization (R. 286). Askew had asked the members of the General Assembly to give their approval of the following procedure in making the necessary constitutional amendments "that the four general chairmen, together with the President and General Secretary, be a committee to consider and put into proper form for consideration by the General Assembly, such necessary changes in our organization as outlined herein" (R. 273). This request of Askew's was refused. The radical difference in views between Askew and the employees led to Askew's elimination as President of the then Association (R. 276).

As pointed out above, Askew had, prior to his resignation, attempted to participate in the deliberation of the committee formulating the constitution. He was twice requested to leave the room, and was not permitted to take any part in those deliberations (R. 182).

The Board concedes that neither Askew nor Wilkes had any supervisory powers, but it vaguely infers, in its findings, that in some way undisclosed by any evidence, they were in a position to "translate to the employees the desires of the respondent," and it finds that the respondent was responsible for their activities. And the Board says: "It is reasonable to assume that to such

employees they represented the "Management." This assumption is without the slightest evidence to support it. The action of the committee elected by the employees to formulate a new constitution, in refusing to allow Askew to have any part in their deliberations, affirmatively shows that the employees were not influenced in any way by his views, and even if it could be assumed that Askew's views reflected in any way the wishes of the Company, it would be manifestly unfair to infer that the employees were influenced by the Company's wishes through Askew. But we repeat, there is not a scintilla of evidence that Askew was acting on behalf of the Company, or representing the Company's views or wishes.

As to Mrs. Wilkes, it is true that she was very active in the formation and adoption of the new constitution. She gave freely of her time and wrote many letters urging its adoption, but there is not the slightest evidence that any of her activities were influenced by any officer or supervisory employee of the Company. True, she was a stenographer and worked as secretary to one of the officials, but it should be borne in mind that a large percentage of the employees who are members of the Association, and who desired to be represented by it, were of the same class. Mrs. Wilkes had as much right under the Act to express her choice of a bargaining agency and to help organize and form one, as any other employee of the Company. The inference, or assumption, that some officer of the Company secretly told her what the Company wanted, or that she was, in some undisclosed way, used as a tool for the Company, is wholly unjustified. It is

respectfully submitted that the theory of the Act is that employees who are entitled to be members of, and be represented by, labor organizations, are intelligent enough and have character enough to exercise these rights. And we submit that it is unfair, in the absence of evidence and on a bare suspicion, to assume the contrary.

2. *The Board said "What is said above respecting Wilkes and Askew applies to Weil and we find the respondent responsible for his activities in the Association" (footnote R. 106).*

The uncontradicted evidence is that Weil had no supervisory powers whatever. Indeed, the Board concedes this, but the Board indulges in the same assumption, on nothing more, we submit, than bare suspicion or conjecture, as it did with respect to Mrs. Wilkes and Askew.

3. *The Board's finding that it was the "manifest" wish of the Company that the old Association should be continued unchanged "except for concessions respecting its more obvious financial support by the respondent" is without evidence to support it.*

This ruling implies that the Company had, and made known, in some way, a wish with respect to the matter referred to in this finding of the Board. Evidence is wholly lacking to support this finding. The evidence demonstrates that immediately after the passage of the Act the Company, through its Acting President, took definite and affirmative steps to make known to the officials of the Company, and to all of the employees of the Company, that it was, and would be, the policy of the Company to comply with the "letter and spirit" of the

Act. It took steps to bring to the attention of the employees the provisions of the Act. True, the Company, at that time, did not think that it was a violation of the Act, either in letter or spirit, for it to allow the employees' Association certain very minor privileges, but as soon as it became aware of the fact that even these minor privileges might be technically contrary to the Act, it withdrew them, and, from the early part of 1937, no such even minor privileges were accorded to the Association. The Board, in spite of the stipulation to the effect that the instructions given by Warren, the then Acting President of the Company, were carried out and that the information with respect to the provisions of the Act and the policy of the Company, was conveyed to all of the employees, found, in effect, that the employees were, in some undisclosed manner, led to believe that the Company's policy was the very reverse of that expressed by Warren, and communicated to the employees. This, we submit, is without substantial evidence to support it and is contrary to the positive evidence.

4. *The finding of the Board to the effect that the employees, in selecting the Association as their bargaining agency, and in reaffirming their choice in the referendum of 1941, acted under the "impact" of the Company's influence, ignores the overwhelming weight of the evidence and its without any substantial evidence to support it.*

The positive uncontradicted evidence is that the Company never, at any time or in any manner (except possibly the action of two minor officials or supervisory employees at Shreveport, in the latter

part of 1940), sought in any way to influence the employees in any matter concerning their choice of a bargaining agency. On the contrary, the evidence is that the Company, from the very beginning after the passage of the Act, took particular pains to inform the employees of their rights under the Act and to assure them of the Company's non-interference with the exercise of those rights. When the Company learned, in the early part of 1941, that the Association intended to take the vote of the employees as to their wishes with respect to whether the Association should continue to be their bargaining agency, it posted notices, throughout the territory, clearly and emphatically informing the employees of their rights and of the Company's neutrality. In fact, the only criticism of the Board with respect to this is that the Company did not affirmatively notify the employees that it had withdrawn recognition of the Association, but merely "noted" that bargaining relations no longer existed between the Company and the Association. It is submitted that this, to say the least of it, is a very narrow view to take of the matter when the rights of the employees, under the Act, are at stake. It is believed, and we earnestly urge, that the Act should not be given any such narrow technical application.

The Board, in this connection, refers to, and relies, to a large extent on, *Western Union Telegraph Co. v. National Labor Relations Board*, 113 Fed (2) 992. In that case there were a great many facts tending to show domination, none of which exist in this case. There it was emphasized that the employer "had been consistently hostile to trade

unions"; that it had displayed an "undeviating resistance to any unionization of its employees"; that it had taken pains to make known its policy not to employ anyone who would not become a member of the Association; that it had discharged employees who had joined outside unions, and had "employed spies to learn who were such members." From all of the evidence in that case the court there held that the finding of the Board of Company domination was not without substantial support. Judge Learned Hand, in the opinion in that case, page 997, said: "We should indeed hesitate to say with the Board that the Association was an abject creature of the Company; it had had a history of controversies which seem entirely genuine, so far as the record goes, and which appear to have resulted in substantial gains. We can see no justification for putting these aside as sham battles. But it is not necessary that we should pass upon that; it is enough if the record supports a finding that the Company did so far foster or control the Association that its employees were likely on that account to prefer it to outside unions."

This Court in *National Labor Relations Board v. Link-Belt Co.*, *supra*, held that isolated portions of the evidence should not be controlling, but that the evidence should be weighed and considered as a whole. We respectfully invoke that rule here, and we respectfully submit that considering the evidence in this record as a whole, it demonstrates that the employees, by a vast majority, have freely, and without coercion or intimidation, on several occasions, expressed their choice of this Association as their bargaining agency. And we

respectfully submit that this choice should not be ignored and swept aside because of some slight misconceptions of the meaning of the Act in its early stages, and especially where, for some three years before the rival union instigated the complaint there have been no such even minor misunderstandings, or even minor infractions by the employer, or the employees.

The courts have jurisdiction to determine whether the remedies applied by the Board are appropriate. The order of disestablishment, under the circumstances disclosed by the record, is not an appropriate remedy.

This Court, in a recent decision in *Southern Steamship Co. v. National Labor Relations Board*, 316 U. S. 31, ruled, in effect, that the courts have jurisdiction over the question whether the remedy ordered by the Board is appropriate in any case.

We respectfully submit that the order of disestablishment is not, under any view of the evidence, a proper or appropriate remedy. The Association, according to all of the evidence, has been wholly free from any domination or financial support or assistance of the Company, certainly since early in 1937. In the original complaint it was charged that the Company had been guilty of unfair labor practices in the way of seeking to influence or intimidate employees at Shreveport and other places. The amended complaint confined this charge to Shreveport. There was not even a claim that there had been any such at any other place throughout the whole territory where the Company operates. The Association is not interested in whether the Company shall be dealt with concern-

ing the occurrences at Shreveport except to the extent that this may have a bearing on the order of the Board to disestablish the Association. Certainly, it would be a very harsh remedy for the Association representing the employees throughout the nine states to be disestablished because some minor official of the company, in one comparatively small exchange, overstepping his authority and committed some infraction of the Act. It is respectfully submitted that if this infraction is in any way chargeable to the Company, the remedy should be limited to dealing with the Company and appropriate measures taken to prevent any repetition of such infraction, but that the employees throughout the whole nine states should not be deprived of their rights because of this.

CONCLUSION

It has been uniformly ruled by the courts that in cases reviewing orders of the Board the evidence must be viewed and weighed in its entirety, and that when so viewed, there must be substantial evidence to support the Board's finding. A mere scintilla is not sufficient and does not constitute substantial evidence. It is submitted that the evidence in the present case, when tested by this rule, does not support the finding of the Board, or justify the order to disestablish the Association.

The evidence, without serious dispute or conflict, shows, that all financial support by the Company was terminated long before any charges were made or any complaint filed; that the employees were fully and adequately advised of their rights under the Act, and that the Company recognized

those rights and did not attempt to interfere with the employees in the exercise of those rights, or discriminate against them because of any exercise thereof; that the employees, after having been fully advised of their rights under the Act, and of the Company's attitude, reorganized the Association under an entirely new constitution; that at no time had the Company exhibited any antagonism to labor unions, either inside or outside; that there had never been any discrimination by the Company against any employee because of union activity, or any favoritism shown to any employee because of his affiliation with the Association; in short, that there had never been any of the practices tending to coerce or intimidate the employees of the Company such as have been condemned by the courts in cases upholding the Board in ordering disestablishment of so-called "inside" or "company" unions.

It is submitted that the evidence in this case demonstrates a fixed intention and determination on the part of the vast majority of the employees to exercise their rights guaranteed to them by the Act; that pursuant to this determination, they have repeatedly reaffirmed their choice of the Association as their bargaining representative.

The evidence, without conflict or dispute, shows that the employees, in the early part of 1941, overwhelmingly expressed their choice of the Association as their bargaining agency. This was done after all bargaining relations between the Association and the Company had been severed, and after the employees had been fully informed again of

their rights under the Act and of the Company's attitude of neutrality.

It is established by the undisputed evidence, and is, in effect, conceded by the Board, that the Association has functioned as an effective bargaining agency for the employees; that the bargaining processes conducted by it were real and not merely "sham battles"; and that the results obtained have been highly beneficial to the employees.

It is respectfully and earnestly urged on behalf of the employees that they should not be deprived of the right to be represented by their chosen organization because of some technical mistakes that may have been made either by them, or by the Company. The evidence as a whole shows that, regardless of any such technical mistakes, the employees, with the full understanding of their rights, and not acting under any intimidation or coercion, have repeatedly expressed their choice of the Association as their bargaining representative.

Respectfully submitted,

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Nos. 460 - 461

IN THE
Supreme Court of the United States
OCTOBER TERM, 1942

NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY

NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES

WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM BRIEF FOR
RESPONDENT, SOUTHERN BELL TELE-
PHONE AND TELEGRAPH COMPANY

IN THE
Supreme Court of the United States

OCTOBER TERM, 1942

Nos. 460-461

NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY

NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

SOUTHERN ASSOCIATION OF BELL TELEPHONE
EMPLOYEES

**SUPPLEMENTAL MEMORANDUM BRIEF FOR
RESPONDENT, SOUTHERN BELL TELE-
PHONE AND TELEGRAPH COMPANY**

The sole purpose of this memorandum is to bring to the attention of the Court a decision of the Circuit Court of Appeals for the Third Circuit, dated March 31, 1943, in the case of *National Labor Relations Board v. Sun Shipbuilding and Dry Dock Company*. As the decision has not been reported, nine copies of it, obtained from the Clerk of the Circuit Court of Appeals, are being filed with this memorandum.

We are not attempting to analyze the facts of that decision. We point out, however, that the *Sun Shipbuilding and Dry Dock Company* case presented several aspects definitely similar to the case at bar, and that on each of these the decision of the court was in accord with the views here pressed. The decision as a whole strongly sustains our position. Without attempting to go into detail, the following is noted:

The court there, as here, was presented with the contention that inferences drawn by the Board were binding on the court. The court recognizes this as a general rule, but refuses to follow it where the inferences are unreasonable or unfounded. Among other things the court says:

"The duty to find the facts does not carry with it the prerogative of raising suspicion to the status of fact or of basing inferences upon mere speculation."

The court also gives great emphasis to the fact that the defendant company in that case had a record of fairness to labor and of neutrality in labor matters. The same has been proved with respect to the respondent in the case at bar. The court points out that this Court in the *Link-Belt* case had given great weight to the company's labor record, and with respect to that the Circuit Court of Appeals says:

"In that case the employer's attitude to unions was hostile, but the attitude can be no less relevant where it is favorable to the employee freedom in the matter of self organization."

We have pressed this view in the case at bar.

In the *Sun Shipbuilding and Dry Dock Company* case the court was also presented with findings of the Board in which management had been held responsible for the organizational activities of certain employees, but without any proof on which such responsibility of management could fairly be predicated. The court refused to sustain this finding.

Respectfully submitted,

MARION SMITH

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Atlanta, Georgia
April, 1943

SUPREME COURT OF THE UNITED STATES.

Nos. 460, 461.—OCTOBER TERM, 1942.

460 National Labor Relations Board,
Petitioner,
vs.
Southern Bell Telephone and Tele-
graph Company.

461 National Labor Relations Board,
Petitioner,
vs.
Southern Association of Bell Tele-
phone Employees.

On Writs of Certiorari
to the United States
Circuit Court of Ap-
peals for the Fifth Cir-
cuit.

[May 3, 1943.]

Mr. Justice REED delivered the opinion of the Court.

On this certiorari the question is whether the order of the Board herein is supported by substantial evidence. Upon charges filed by the International Brotherhood of Electrical Workers, A. F. of L., the Board issued a complaint on February 17, 1941, against respondent Southern Bell Telephone and Telegraph Company, charging inter alia that respondent company was dominating and supporting respondent Southern Association of Bell Telephone Employees, hereafter referred to as the Association, as a labor organization of its employees in violation of section 8(2) of the act, and that in other ways respondent company had interfered with the rights of its employees in the exercise of rights guaranteed them by section 7 in violation of section 8(1) of the act.¹ After hearing, the Board made findings and conclusions in

¹ The pertinent provisions of the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. § 151 *et seq.*, are as follows:

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

"Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with; restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Pro-

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support of the stated charges and ordered that respondent cease and desist from dominating or interfering with the Association, from contributing financial and other support, recognizing it as the collective bargaining agency of its employees and giving effect to or entering into any collective bargaining contract with the Association and further that it cease and desist from interfering with its employees in the exercise of their rights, including the right to organize and bargain collectively, as guaranteed by section 7 of the act. Affirmative action ordered was that respondent withdraw all recognition from the Association and post appropriate notices to its employees.

Separate petitions were filed in the court below by respondent and the Association to review this order and the Board answered, requesting enforcement. The court below held that the Board's findings were without support in the evidence and that the Board's order requiring the respondent to withdraw recognition from and to disestablish the Association as the collective bargaining agency of its employees was an abuse of discretion and contrary to the policy of the act. It accordingly vacated the order of the Board and denied the Board's petition for enforcement. We turn immediately to the facts of the case and the Board's findings.

- Respondent does a general telephone business in nine southeastern states, furnishing local and long distance communication facilities, both interstate and intrastate. It has 23,000 employees and 1,375,000 subscribers.

The Association was organized in 1919 by respondent Company to represent its employees as a labor organization and admittedly until July 5, 1935, the date of the passage of the National Labor Relations Act, respondent liberally contributed support to the

vided, That subject to rules and regulations made and published by the Board pursuant to section 6(a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

"Sec. 10.

"(c) . . . If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.

"(f) . . . the findings of the Board as to the facts, if supported by evidence, shall . . . be conclusive."

Association: The factual center of controversy here, resolved by the Board against the respondent, is whether this domination and interference came to an end with the reorganization of the Association in the spring and summer of 1935 or at any later date before the complaint. Another act of disassociation is alleged by respondent to have taken place on February 14, 1941.

There is testimony that in April and May, 1935, just before the passage of the National Labor Relations Act, the Association's president, Askew, in anticipation of the passage of the act, successfully canvassed the membership for fifty cent contributions so that the Association would have its own funds and be able to operate after the bill became a law. The Company aided the solicitation with advice, automobile transportation and expenses for the solicitors. Over five thousand dollars was raised. Three Association officials actively engaged in the fund raising. Askew, the President, Weil, the vice-president and soon to be president, and Wilkes, the acting treasurer, were employees having close touch with the company management. Askew was a state cashier, Wilkes was secretary to key officials and Weil, plant practice supervisor, a position described by him as covering the distribution and explanation to the proper employees of printed routine job instructions.

On July 16, 1935, immediately after the passage of the Labor Act, Warren, respondent's vice-president in charge of operations, called a meeting of his chief supervisory employees, attended by Askew and Wilkes as Association officers. At this meeting the Wagner Act was discussed and a "hands-off" policy announced by the Company as to the organization of its workers. The supervisory employees were instructed to and did transmit these views down to the ranks by word of mouth, superior supervisors speaking to their inferiors. No mention was made at this meeting of the disestablishment or dissolution of the Association. A few days later a memorandum on the "Wagner Bill Interpretations" was issued by the Company and called to its employees' attention. It read as follows:

"The Company can continue to pay salaries of Association officers who are filling their regular jobs and doing Association work incidental to their regular duties.

"The Company can continue to pay the salaries of Association officers while engaged in conferring with Management and while they are meeting among themselves before or after these conferences to discuss their presentation or disposition of the matters

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involved. Salaries cannot be paid when Association officers are devoting their time solely to internal affairs of the Association.

"The Company cannot pay traveling expenses. However, all Management Representatives are anxious to cooperate and will endeavor to meet Association officers at such times and places as will be most convenient and economical.

"The Association may continue to use Company premises for their meetings without charge. Space for the exclusive full time use of the Association could not be provided without proper charge.

"Association Local meetings cannot be held on Company time.

"The Association may use Company typewriters and other office facilities when such is incidental to the regular Company use of these facilities. Out-of-pocket expenses such as stamps, stationery and supplies cannot be borne by the Company.

"Association Representatives may make limited use of toll lines upon the same basis as is effective for employees generally.

The expense of preparation and distribution of the Minutes of Joint Conferences will be borne by the Company."

This memorandum was revised in accordance with the Company's views of developments in the interpretation of the National Labor Relations Act. The most significant changes occurred in the revision of April 1937 when the paragraph as to salaries was changed to read:

"1. The Company can pay salaries of association officers while engaged in conferring with Management. The Company cannot pay salaries of association officers under the following conditions:

(a) While they are meeting among themselves before and after joint conferences to discuss their presentation or disposition of the matters involved.

(b) While association officers are devoting their time solely to internal affairs of the association."

In that issue, it was made clear that the Association must pay for services rendered by the Company, such as space, long distance calls and collection of dues. The memorandum concluded:

"The provisions of this Act make it illegal for an employer to dominate or interfere with the formation or administration of any labor organization, and the Management of this Company should conscientiously observe these provisions."

No disestablishment of the Association as the representative of the employees in their negotiations with the management appears from this evidence and the Board found none.

Respondents urge that the historical continuity between the Company organized and financed employee association of 1919 to 1936 and the reorganized association of 1936 to date is not

controlling in determining whether the Association was dominated by the Company in 1941. There was certainly sufficient evidence of continuity to form a basis for the Board's conclusion that the reorganization did not so completely displace the original association as to amount at that time to the creation of a "free and uninspired" employee agency. The reorganization was guided by the principal officers of the existing association. The vice-president of the old became the president of the new. Two of these active reorganizers continued in the higher offices of the Association through 1939. A new agreement with the Company, which for the first time provided for a check-off for association dues, was negotiated before the ratification of the changes in the association constitution, which were made in an attempt to conform to the National Labor Relations Act. The reorganization proceeded by revision rather than by original creation. Members were ineligible for election to offices in locals until a year from their admission and to the presidency until five years. In asking for new applications for membership, it was explained by the Association that it would provide a complete record of membership "and it is not to be considered as a new application for membership." Until the March 1940 meeting the preamble of the revised constitution referred to the formation of the Association in 1919. At that date, the preamble was changed so that it recited the date of the formation to be August 30, 1935.

The revision of the constitution was important from the standpoint of the Labor Act. The Company could no longer properly pay the expenses of the Association. Consequently the membership had to pay dues to meet the expenses. These changes were made.

Even though this continuity of the employee organization as a matter of law may not be controlling as to the continuance of dominance by the Company, it is at least evidence of such dominance, entitled to consideration by the Board. The effects of long practice persist. Notwithstanding freedom from labor difficulties, the disestablishment of an employee organization may be necessary to give untrammelled freedom for the creation of a bargaining unit. *Labor Board v. Greyhound Lines*, 303 U. S. 261, 271; *Labor Board v. Newport News Co.*, 308 U. S. 241, 250; *Westinghouse Electric & Mfg. Co. v. National L. R. Board*, 112 F. 2d 657, 660, affirmed 312 U. S. 660.

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So much the respondents concede, or at least assume: They agree that a cleavage is necessary but they deny that the Board may decide that all that happened between the passage of the Act in 1935 and the issuance of the complaint in 1941 does not overcome the lawful domination prior to the enactment of the Act. Formal disestablishment is not; the Company says, the only act which will comply with the law and the evidence after the passage of the Labor Act shows without contradiction, so the respondents contend, that the Company was neutral and the Association the choice of the employees:

The Board called attention to minor favors shown the Association after 1935 by the Company: The use of a Company bulletin board to post association notices, the limited use of employer space or facilities, the deduction of dues without charge, all without discrimination between employee organizations and prior to administrative and judicial clarification of the Labor Act, may be of little importance but they are a part of the circumstances from which the Board is to draw conclusions.

There is also evidence that in 1940 a long distance supervisor at Shreveport, Louisiana, at a superior's suggestion, undertook to influence two subordinates to favor the Association against the efforts of an outside union to secure members. While only a single incident, it is entitled to consideration by the Board.

The respondents' evidence shows further that when an outside union sought members among the Company employees and while the Labor Board was investigating charges of Association dominance by the Company, the Association wrote the Company in part as follows:

"Because such a charge clouds this Association's right to represent the employees of the Company and that under such circumstances the best interests of the employees may not adequately be served, the Association will not undertake to act as their collective bargaining agent pending a canvass of its membership by signed ballot."

Immediately the Company, on February 14, 1941, posted notice to its employees which quoted sections 7 and 8 of the Labor Act and then added:

"The Company Recognizes Its Employees' Right to Join, Form or Affiliate With Any Labor Organization of Their Own Choice and Freely to Exercise All Rights Secured to Them by This Act.

"The Company Guarantees Its Strict Compliance With All the Provisions of This Act and That No Employee Will Be Discrim-

inated Against or Suffer Any Other Penalty Because of His or Her Exercise of Any Right Secured by This Act.

"The Company Is Not Interested in Whether Its Employees Join or Do Not Join Any Labor Organization."

Thereafter by means of a signed ballot poll a majority of the employees indicated their desire to continue their membership in the Association and their choice of the Association as their representative for collective bargaining. Pending the poll, the Company continued in effect its 1940 agreement with the Association. After the poll and subsequent to a certification to it of the manner of voting and the result, the Company on March 6, 1941, recognized the Association as the "authorized collective bargaining agent of the employees of this company." The same agreement continued to govern the relations between the Company and the Association until the present hearing.

The respondents' evidence shows also that in the years 1936 to 1940, inclusive, the Association represented the employees in bargaining conferences over wages, hours and working conditions. Out of these conferences came substantial concessions to the employees, estimated by witnesses as worth more than three million dollars annually to the employees.

From the group of circumstances heretofore detailed in this opinion, the Board concluded that the Company had continued to countenance the Association. It held that:

"The effect of the domination and support of the Association by the respondent prior to and during the years since 1935, could not, under the circumstances, be dissipated except by an explicit announcement to the employees that the respondent would no longer recognize or deal with the Association. In the absence of such action by the respondent, its employees were not afforded the opportunity to start afresh in organizing for the adjustment of their relations with the employer which they must have if the policies of the Act are to be effectuated."

We are of the opinion that there was substantial evidence to justify this conclusion. Since the Association prior to the passage of the National Labor Relations Act in 1935 was obviously a company dominated and supported union, the question of the weight to be given the passage of time or subsequent efforts to dissipate the effect of this early domination is for the Board. Its conclusion is an inference of fact which may not be set aside upon judicial review because the courts would have drawn a different inference. *Labor Board v. Greyhound Lines*, 303 U. S. 261, 270; *Labor Board v. Falk Corp.*, 308 U. S. 453, 461.

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Management control over company sponsored employee organizations runs the entire scale of intensity. It may be slight or complete. A genuinely free union composed of employees of one corporation alone may satisfy the requirements of section 7 but where, as here, evidence exists of original employer interference, the Board may appraise the situation and even forbid the appearance of such a union on the ballot to select bargaining representatives where in the Board's judgment the evidence does not establish the union's present freedom from employer control. *Labor Board v. Falk Corp.*, *supra*, 461, 462. In the present case the Board ordered the Company to completely disestablish the Association as bargaining representative and to cease and desist from giving effect to the contractual arrangements resulting from the Association's former representation of the employees. For the reasons given this order was, in our opinion, within the discretion of the Board.

The order of the Circuit Court of Appeals is reversed and the cause is remanded to that Court with instructions to enforce the order of the Board.

Mr. Justice ROBERTS took no part in the consideration or decision of this case.

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